

EXHIBIT 1

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICROSOFT CORPORATION, a)
Washington corporation,)
)
Plaintiff,)
)
vs.) Case No.
) 07-CV-01840-CW
INTRAX GROUP, INC., a d/b/a,)
SURPLUS COMPUTERS, a)
California corporation;)
MICHAEL MAK, an individual;)
and JOHN DOES 1-5,)
)
Defendants.)
)

DEPOSITION OF MICHAEL MAK
San Francisco, California
Wednesday, June 25, 2008

Reported by:
RACHEL FERRIER
CSR No. 6948
JOB No. 687655

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3
4 MICROSOFT CORPORATION, a)
Washington corporation,)
5 Plaintiff,)
6 vs.) Case No.
07-CV-01840-CW
7 INTRAX GROUP, INC., a d/b/a,)
SURPLUS COMPUTERS, a)
8 California corporation;)
MICHAEL MAK, an individual;)
9 and JOHN DOES 1-5,)
10 Defendants.)
11)
12)
13)
14)
15 Deposition of MICHAEL MAK,
16 taken on behalf of Plaintiff, at
17 505 Sansome Street, Suite 502,
18 San Francisco, California, beginning at
19 8:51 a.m. and ending at 1:49 p.m. on
20 Wednesday, June 25, 2008, before
21 RACHEL FERRIER, Certified Shorthand
22 Reporter No. 6948.
23
24
25

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2
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Page 5

1 San Francisco, California, Wednesday, June 25, 2008
2 8:51 a.m. - 1:49 p.m.
3
4 MICHAEL MAK,
5 having been duly sworn, was examined and testified as
6 follows:
7 EXAMINATION
8 BY MR. ROLLER:
9 Q Mr. Mak, please state your full name.
10 A Michael Yu-Mo Mak.
11 Q Can you spell your middle name.
12 A Sure. It's Y-u, dash, M-o.
13 Q Can you please tell us where you live.
14 A 462 Cammish Avenue, San Jose, California
15 94123.
16 Q Have you ever been deposed before?
17 A Yes.
18 Q Can you tell me when?
19 A The last time I can remember now I was --
20 deposed was several years ago involving a lawsuit
21 that -- when I worked for --
22 MR. DILLICK: He asked you when.
23 THE WITNESS: When? Oh, I don't know
24 exactly when.
25 BY MR. ROLLER:

2 (Pages 2 to 5)

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1 Q Can you tell me what case it was in?
2 A I think it was Novell versus Wierd Stuff.
3 Q Do you know what court that --
4 A No.
5 Q -- proceeding was in?
6 A No. I was 22, 23 years old.
7 Q How old are you now?
8 A 39 -- 38.
9 Q So it would have been somewhere around 15
10 years ago.
11 (Discussion off the record.)
12 BY MR. ROLLER:
13 Q Let's go back to the question I asked
14 before.
15 Is it accurate to say it would have been
16 about 15 years ago that you were deposed?
17 A That would be about accurate.
18 Q I'm going to come back to the deposition in
19 a second, but I'd like to talk first about some of
20 the ground rules, some of the ways that we should
21 conduct our deposition today. And you were probably
22 told similar things back when you were deposed, but
23 that was 15 or so years ago.
24 A deposition is not like a normal
25 conversation. If you and I and your lawyer were down

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1 at Starbucks having a cup of coffee, we would talk to
2 each other and there would be times when you would
3 appropriately kind of anticipate what I was saying
4 and start to answer and we would talk over each other
5 and we would use gestures and nods and those kinds of
6 things to understand each other, and that would work
7 because that's how we as humans communicate.
8 Now, here we are creating a record that
9 could be used later in a court proceeding, and the
10 record is being created by Rachel, who is our Court
11 Reporter, and so there are certain things that, if we
12 do them, will make it much easier for her to record
13 what's happening here and create what we call a
14 cleaner record.
15 So one of the things that I'll ask -- and
16 I'll try to do it as well -- is that we not talk over
17 each other. If I'm asking a question, please let me
18 get to the end of the question before you answer it,
19 even if you know exactly where I'm going with it.
20 And when you are answering a question, I will try to
21 let you go until you are done answering it before I
22 ask my next question.
23 Please answer audibly so it's not -- it
24 doesn't work to nod "yes" or "no," and it also is
25 very helpful if instead of saying "uh-huh" and

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1 "huh-uh," you say "yes" or "no."
2 There are times when your attorney might
3 object, and what he's doing there is making an
4 evidentiary record for the subsequent use of the
5 deposition transcript. He needs to do that. When he
6 does it, please let him go ahead and make those
7 objections, and then once he's done, answer the
8 question. The only exception to that is if he
9 instructs you not to answer, then he and I will have
10 a conversation about what we are going to do. But
11 just because he has objected, unless he says, "Don't
12 answer," doesn't mean you shouldn't answer. You
13 should then go ahead and answer my question.
14 If you need to take a break at any time,
15 that's fine; just let me know. The only thing I ask
16 is that if a question is pending, you go ahead and
17 give me an answer before we take that break.
18 I'm going to try my best to ask clear
19 questions. I want you to let me know if you don't
20 understand a question. If you don't let me know that
21 you don't understand, I'm going to assume that you do
22 understand my question. Okay?
23 A Okay.
24 Q Going back to the deposition that we were
25 talking about a few moments ago, you said you thought

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1 it was in a case called Novell versus Wierd Stuff.
2 Do you know why you were deposed in that
3 case?
4 A I don't remember. I mean, I -- I don't
5 particularly remember.
6 Q Do you know what you testified about?
7 A No.
8 Q Generally, was it about -- do you know the
9 general subject matter?
10 A I don't --
11 MR. DILLICK: Was it or wasn't it?
12 THE WITNESS: Could you repeat the
13 question?
14 BY MR. ROLLER:
15 Q Do you know the general subject matter that
16 you testified about?
17 A It was about the transaction that the
18 company that I worked for. They sold some Novell
19 product.
20 Q What company did you work for?
21 A Wierd Stuff Warehouse.
22 Q And did Novell sue Wierd Stuff?
23 A Correct.
24 Q Do you know what Novell sued Wierd Stuff
25 for?

3 (Pages 6 to 9)

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1 A No.
2 Q Do you know if it was --
3 A Well, I'm -- I don't remember.
4 Q Do you know if it was copyright
5 infringement?
6 A I, personally, do not remember. It's been
7 a long time.
8 Q Do you recall what you said in that
9 deposition?
10 A No.
11 Q Who did Wierd Stuff sell the Novell
12 products to?
13 A I don't recall.
14 Q Do you know if that Novell versus
15 Wierd Stuff case proceeded to trial?
16 A I'm not sure, to be honest. I didn't
17 follow the case closely.
18 Q Did you testify at trial in that case?
19 A No.
20 Q Have you been deposed any other time aside
21 from the Novell versus Wierd Stuff case?
22 A I don't recall at this moment.
23 Q Have you ever testified at trial?
24 A Yes.
25 Q Do you know when that was?

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1 A It was several years ago.
2 Q Less than five years?
3 A Yes.
4 Q Less than five?
5 A Less than five.
6 Q Less than three years?
7 A I'm not sure.
8 Q Do you know what case it was in?
9 A It was actually for a grand jury
10 indictment.
11 (Attorney-client conference.)
12 BY MR. ROLLER:
13 Q What did you testify about before the grand
14 jury?
15 A It was primarily about some stolen products
16 some individual had sold us.
17 Q And when you say "sold us," who do you
18 mean?
19 A The company.
20 Q Which company?
21 A Intrax Group.
22 Q Who was the individual?
23 A Tony Rozby.
24 Q How do you spell Mr. Rozby's last name?
25 A I don't know.

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1 Q What did Mr. Rozby sell to Intrax that was
2 allegedly stolen?
3 A Hard drives.
4 Q Anything else?
5 A Not that I'm aware of.
6 Q Do you know if Mr. Rozby was indicted?
7 A I have no idea.
8 Q Do you know if the grand jury was in state
9 or federal court?
10 A I'm not sure.
11 Q Getting back to the Wierd Stuff deposition,
12 do you know if -- do you know where you were deposed
13 physically?
14 A Somewhere in San Jose.
15 Q Have you ever -- have you testified before
16 the grand jury in any other instances aside from the
17 Rozby proceeding?
18 A No.
19 Q Have you ever testified at trial?
20 A Which trial?
21 Q At any trial.
22 A I just testified about --
23 MR. DILLICK: Have you ever testified at a
24 trial?
25 THE WITNESS: Yes. I testified at a trial

Page 13

1 two weeks ago, the IRS trial.
2 MR. DILLICK: Okay.
3 BY MR. ROLLER:
4 Q What was the IRS trial?
5 A It was a vendor of ours who didn't pay his
6 taxes.
7 Q Who is that vendor?
8 A Yosef Shaudri (phonetic).
9 Q Where was this trial?
10 A San Francisco.
11 Q And was the IRS suing Mr. Shaudri?
12 A I'm not sure.
13 Q What did you testify about?
14 A They just wanted to know if the
15 transactions that he did with us actually occurred.
16 Q Did they?
17 A Yes.
18 Q What did Mr. Shaudri sell you?
19 A Computer products.
20 Q Like what?
21 A Hardware, software.
22 Q And when I say "sell you," was he selling
23 to Intrax?
24 A Selling to Intrax, not to my client.
25 Q What kind of hardware?

4 (Pages 10 to 13)

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1 A Used computers, miscellaneous hardware.
2 Q What kind of software?
3 A Utilities, applications, games.
4 Q Any Microsoft software?
5 A Yes.
6 Q Do you know what titles?
7 A I believe it was like Microsoft Windows.
8 Q XP? Vista? 2000?
9 A No. No. It was way before that.
10 Q What was it?
11 A More like '95, '98.
12 Q Did he sell you office products?
13 A I don't recall.
14 Q When did Mr. Shaudri sell Intrax Microsoft
15 software?
16 A Probably in '04.
17 Q If he was selling to you in '04, why was
18 Mr. Shaudri not selling Windows 2000 or XP?
19 MR. DILLICK: Don't answer that. That
20 would be speculating.
21 MR. ROLLER: That's not -- you can't
22 instruct him not to answer it. You can make an
23 objection.
24 MR. DILLICK: I am instructing him --
25 Well, I'm instructing you to listen very

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1 carefully. He's asking you to tell him why it was
2 that Shaudri wasn't selling something else.
3 THE WITNESS: I have no idea why he would
4 not be selling something else.
5 BY MR. ROLLER:
6 Q Why, in 2004, was Intrax buying Windows 95?
7 A Because we had customers that would buy it.
8 Q Do you know if Mr. Shaudri offered to sell
9 you Windows 2000?
10 A I don't remember.
11 Q Do you know if he offered to sell you
12 Windows XP?
13 A I don't remember.
14 Q Do you know if he offered to sell you any
15 Microsoft office products?
16 A Like I say, I don't remember.
17 Q Do you know the result of the Shaudri
18 trial?
19 A No. It's ongoing.
20 Q Aside from the Shaudri trial, have you ever
21 testified in any other trial?
22 A I don't remember at this time.
23 Q Aside from the Shaudri trial, the Rozby
24 grand jury proceeding, and the Wierd Stuff
25 deposition, have you ever provided testimony where a

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1 Court Reporter has recorded your testimony?
2 A I don't remember.
3 Q Have you ever been convicted of a crime?
4 A No.
5 Q Has any company that you have owned ever
6 filed for bankruptcy protection?
7 A Yes.
8 Q Okay. Which company?
9 A Intrax Group.
10 Q And when did Intrax most recently file for
11 bankruptcy protection?
12 A I believe it was in November '07.
13 Q Why did Intrax file for bankruptcy
14 protection?
15 A Pending the current litigation with
16 Microsoft.
17 Q Any other reason?
18 A Business was not as good.
19 Q What do you mean by that, "business was not
20 as good"?
21 A Our sales just weren't as good as they used
22 to be.
23 Q Any other reason?
24 A No.
25 Q Has Intrax, before November of 2007, ever

Page 17

1 been in bankruptcy proceedings?
2 A What do you mean by that?
3 Q Before the November 2007 bankruptcy filing,
4 had Intrax ever filed for bankruptcy protection --
5 A No.
6 Q -- before?
7 A No.
8 Q So the November 2007 Intrax bankruptcy is
9 the only bankruptcy that you Intrax has ever --
10 A Correct.
11 MR. DILLICK: Let him finish his question
12 before you answer.
13 BY MR. ROLLER:
14 Q Any other companies that you have owned
15 filed for bankruptcy protection?
16 A No.
17 Q Any other companies at which you worked
18 filed for bankruptcy?
19 A Wierd Stuff Warehouse.
20 Q Do you know when that was?
21 A No.
22 Q Do you know what jurisdiction it was?
23 A No.
24 Q Do you know what chapter it was?
25 A No.

5 (Pages 14 to 17)

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1 Q Do you know why Wierd Stuff filed for
2 bankruptcy?
3 A I'm not sure.
4 Q Even if it's not a certainty, do you have
5 any reason why -- any thoughts on why Wierd Stuff
6 filed for bankruptcy protection?
7 MR. DILLICK: Don't speculate.
8 MR. ROLLER: Steve, that's not a proper
9 objection and you know it.
10 MR. DILLICK: Don't speculate.
11 MR. ROLLER: I didn't ask him to speculate.
12 I asked aside from --
13 MR. DILLICK: I'm talking to my client.
14 MR. ROLLER: It's not a proper instruction;
15 you know it.
16 MR. DILLICK: Do you have a question?
17 MR. ROLLER: If we need to leave the
18 deposition open and get a ruling on that improper
19 instruction and come back, your client's going to pay
20 for me to fly down.
21 Are you instructing him not to answer that
22 question? Are you instructing --
23 MR. DILLICK: Mr. Roller, I have made my
24 statement on the record. Now --
25 MR. ROLLER: Can you read my question back.

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1 MR. DILLICK: Go ahead and ask him --
2 (Record read by the Reporter as follows:
3 "QUESTION: Even if it's not a certainty,
4 do you have any reason why -- any thoughts
5 on why Wierd Stuff filed for bankruptcy
6 protection?")
7 BY MR. ROLLER:
8 Q Please answer the question.
9 A I assume it had to do with the Novell case.
10 (Attorney-client conference.)
11 THE WITNESS: Okay.
12 BY MR. ROLLER:
13 Q Why do you assume it had to do with the
14 Novell case?
15 A Because you asked me for a guess.
16 Q Why do you guess that?
17 A That's the only thing that came to mind.
18 Q Have you ever personally filed for
19 bankruptcy protection?
20 A No.
21 Q Any other companies at which you worked
22 ever file for bankruptcy protection?
23 A No.
24 Q Did you go to high school?
25 A Yes.

Page 20

1 Q Did you graduate from high school?
2 A Yes.
3 Q Which high school?
4 A Edison High School in Stockton, California.
5 Q When did you graduate?
6 A In '87.
7 Q Did you go to college?
8 A Yes.
9 Q Where did you go to college?
10 A San Jose State.
11 Q Did you graduate?
12 A No.
13 Q What did you study at San Jose State?
14 A Marketing and advertising.
15 Q When did you stop studying at San Jose
16 State?
17 A In about '92, '93.
18 Q When did you start studying at San Jose
19 State?
20 A About '90, '91.
21 Q Have you attended any other colleges?
22 A No. Oh, I'm sorry, the community college.
23 Q Which community college?
24 A San Joaquin Delta College in Stockton.
25 Q And when did you attend San Joaquin Delta

Page 21

1 College?
2 A '87 to '90.
3 Q Did you get a degree from it?
4 A No.
5 Q What did you study at San Joaquin --
6 A Just general -- sorry. General education.
7 Q Any other colleges you have attended?
8 A No.
9 Q Have you participated in any kind of
10 technical training programs?
11 A No.
12 Q Have you attended any training programs?
13 A What do you mean by that exactly? What --
14 Q If you don't understand my question, you
15 can tell me.
16 A Yeah, I don't understand.
17 Q Okay. I mean a program where you are
18 trained to use some product or trained in some method
19 of doing something.
20 A Like a trade school?
21 Q Sure, that's one example.
22 A I've never attended a trade school.
23 Q Ever trained in, for example, computer
24 programming?
25 A No. Well, I mean, just school, just

6 (Pages 18 to 21)

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1 college and high school.
2 Q Aside from college and high school?
3 A No.
4 Q Have you attended any seminars?
5 A I've attended various tech seminars
6 throughout the years.
7 Q What tech seminars?
8 A I don't remember, to be honest with you. I
9 haven't been to one in a long, long, long time.
10 Q When was the last time you attended a tech
11 seminar?
12 A Probably the last one was in Redmond,
13 Washington, that Microsoft was holding.
14 Q Do you know when that was?
15 A I'm not sure.
16 Q What happened there?
17 A It was a gathering of various Microsoft
18 resellers from throughout the country who were
19 authorized Microsoft resellers.
20 Q What happened at that gathering?
21 A What happened? What do you mean by that?
22 Q What happened?
23 A They talked about the products. They
24 talked about the various products that were available
25 and how to sell the various products.

Page 23

1 Q Any other technical seminars you can
2 remember?
3 A No, because I generally don't attend tech
4 seminars.
5 (Attorney-client conference.)
6 THE WITNESS: Yes. You know, I just
7 remembered one thing that did happen at this tech
8 seminar that Microsoft was throwing. There was a
9 woman, and they were talking with all the authorized
10 academic resellers, and one of the buzz -- I just
11 remember all this. One of the buzz that was
12 happening was Microsoft had just released Office
13 2000, and there wasn't -- there was not a great
14 acceptance for the product. So what Microsoft did
15 was they decided to make an academic version that
16 they would allow all the retailers, whether it's
17 Costco, Frys, or whatever, to sell, and they did not
18 check whether customers were buying this product or
19 authorized to buy it.
20 So what happened is during this tech
21 seminar, during the educational portion that this
22 woman was conducting, what happened was she asked
23 were there any questions. So I raised up my hand.
24 She didn't call on me, so I blurted out the question.
25 And my question to her was, "Why are all these other

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1 retailers -- Costco, Frys, CompUSA -- allowed to sell
2 this academic product without any restrictions to
3 anybody that walks through the door when we were held
4 to such a different standard and higher standard than
5 everybody else?" And her reply back to us was,
6 "Well, you have other product to sell. That was just
7 one product."
8 And that I do remember happened at that
9 seminar. And also it made such a big ruckus at the
10 closing day. The person that was running that whole
11 seminar, he made a point to say, you know, "There was
12 an incident yesterday. We are going to address it."
13 I mean, people were generally very, very, very upset
14 at the seminar over that issue.
15 MR. ROLLER: Okay. I object to the extent
16 that answer is nonresponsive and lacks foundation.
17 MR. DILLICK: Well, wait a second. You
18 asked him what happened at the Microsoft tech
19 seminar, and he is describing to you specifically in
20 response to that question things that happened at the
21 seminar. It's directly responsive to your question.
22 MR. ROLLER: And I've made my objection.
23 We don't need to argue about this now.
24 Q You said you just remembered the story you
25 just told me about someone talking and you asking the

Page 25

1 question; is that right?
2 MR. DILLICK: No, wait. I object to your
3 characterization of it was a story. He is giving
4 testimony. Unless you want to characterize the
5 entire deposition as a story, my client is testifying
6 about facts that you asked him to describe. Please
7 give it the deference that you should be giving it.
8 BY MR. ROLLER:
9 Q You just testified that at -- well, please
10 strike that.
11 You testified that you just remembered the
12 incident you described at the tech seminar; is that
13 correct?
14 MR. DILLICK: Object. His testimony will
15 read for itself.
16 BY MR. ROLLER:
17 Q You can answer.
18 MR. DILLICK: Read the question back,
19 please.
20 (Record read by the Reporter as follows:
21 "QUESTION: You testified that you just
22 remembered the incident you described at
23 the tech seminar; is that correct?")
24 MR. DILLICK: Don't answer that.
25 MR. ROLLER: It's an improper objection.

7 (Pages 22 to 25)

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1 MR. DILLICK: It's not an improper
2 objection. You are asking -- he just testified about
3 whatever he testified about. It's on the record what
4 he testified about. He doesn't have to tell you
5 whether he just testified about it.
6 MR. ROLLER: Are you instructing him not to
7 answer?
8 MR. DILLICK: I am instructing him not to
9 answer that question. Please ask a different one.
10 BY MR. ROLLER:
11 Q What caused you to remember the incident
12 you just described?
13 A I have told Steve this incident before in
14 the past --
15 MR. DILLICK: Hold on a second.
16 Other than -- well, other than asking your
17 question to tell you what happened at the seminar.
18 You asked him to tell you what happened at the
19 seminar. Your question made him remember.
20 BY MR. ROLLER:
21 Q Did something your attorney told you when
22 you were conferencing with him cause you to remember
23 that incident?
24 MR. DILLICK: No. Wait a second.
25 That's -- you are not going to answer that question

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1 either. That's an improper question.
2 MR. ROLLER: Steve. Okay --
3 MR. DILLICK: You are not allowed to ask my
4 client anything about attorney-client communications.
5 MR. ROLLER: Okay. Then what I will do is
6 describe on the record what happened. I asked your
7 client a question. He had finished answering. You
8 spoke with him. Then he said he remembered. If you
9 want to make your testimony relevant at issue here, I
10 can take your deposition. But that is improper.
11 It's improper and you know it. And if we have it, we
12 will bring it to the Court and we will get that
13 record.
14 Do you disagree with my characterization of
15 what happened, Mr. Dillick? Do you disagree with my
16 description of what happened?
17 MR. DILLICK: I'm not taking -- I'm not
18 testifying here. I'm not making any -- I'm not sure
19 if I disagree with it or agree with it. I'll think
20 about it.
21 MR. ROLLER: Fine.
22 Q Aside from the Microsoft seminar, are there
23 other seminars that you recall attending?
24 A No.
25 Q I'd like to talk about your work history

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1 following high school.
2 After your graduation from high school, did
3 you take a job?
4 A Yes.
5 Q And where did you work?
6 A My first job was at a Chinese restaurant.
7 Q When was that?
8 A The exact dates, I'm not sure.
9 Q Did you have any other job while you were
10 working at the Chinese restaurant?
11 A I worked at two different Chinese
12 restaurants.
13 MR. DILLICK: That's not what he asked you.
14 THE WITNESS: No, I didn't have another
15 job.
16 BY MR. ROLLER:
17 Q Aside from your work at the two Chinese
18 restaurants -- please strike that.
19 After you started working at the Chinese
20 restaurant, what was your next job?
21 A I worked for a paralegal firm.
22 Q What was that?
23 A I remember the owner's name, but I do not
24 remember the name of the company.
25 Q Do you know about when it was?

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1 A Maybe '90 to '92, '89 to '90. I'm not
2 sure.
3 Q What was the owner's name?
4 A Melissa Jarvis Reid.
5 Q What was the last name?
6 A Reid.
7 Q After you worked at the paralegal firm,
8 what was your next job?
9 A Big 5 Sporting Goods.
10 Q Did you have any other job while you were
11 working at Big 5?
12 A No.
13 Q After you worked at Big 5, what was your
14 next job?
15 A I worked at San Joaquin Delta College
16 bookstore.
17 Q When was that?
18 A The exact dates, I'm not sure.
19 Q Do you know about when?
20 A I don't really want to guess and give you
21 the wrong information.
22 Q Do you know about when?
23 A You are asking for a guess?
24 MR. DILLICK: Don't guess.
25 BY MR. ROLLER:

8 (Pages 26 to 29)

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1 Q Was it at the same time that you were a
2 student at San Joaquin Delta College?
3 A Correct.
4 Q Was it at all after the time you were a
5 student at San Joaquin Delta College?
6 A No.
7 Q After you worked at the San Joaquin Delta
8 College bookstore, what was your next job?
9 A I worked at West Lane Racquetball Club,
10 tennis shop.
11 Q Do you know when that was?
12 A It was the last year that I went to
13 San Joaquin Delta College.
14 Q Where did you work after the racquetball
15 club?
16 A Then I came out to San Jose State.
17 Q Did you have any jobs when you were a
18 student at San Jose State?
19 A I actually worked for an attorney, but I
20 don't remember his name.
21 Q And that was while you were a student at
22 San Jose State?
23 A Correct, but that was just a short period
24 of time.
25 Q Any other jobs while you were a student at

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1 San Jose State?
2 A I believe I cold-called; you know, I was a
3 cold-caller.
4 Q For who?
5 A I don't know. It's one of those companies
6 where you are at home and they call you up and, Hi,
7 this is such-and-such, and I'm calling you about
8 making a donation to the local firemen's club, or
9 something like that.
10 Q Aside from the cold-call work and working
11 at the racquetball club, did you have any other jobs
12 when you were a student at San Jose State?
13 A I worked at -- I worked for Wierd Stuff.
14 Q What were your duties at Wierd Stuff?
15 A I -- initially, I started out as a
16 warehouse person, and then I ended up becoming a
17 salesperson in the retail store, and then I ended up
18 being in their sales department.
19 Q What were your duties when you were a
20 salesperson in the retail store?
21 A Assist customers who walked in.
22 Q And what kind of products were for sale at
23 the retail store?
24 A Electronic gadgets, Surplus Computer
25 products, Surplus software.

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1 Q Was there a difference between your work
2 when you were a salesperson in the retail store and
3 when you were in the sales department?
4 A Yes.
5 Q What was the difference?
6 A In the sales department, I sold mostly to
7 resellers.
8 Q What products did you sell to resellers?
9 A Electronic components, chips, computer
10 hardware, software, anything that came in through the
11 door, plastic gloves.
12 Q Did you have any other positions at
13 Wierd Stuff aside from the warehouse work, the sales
14 in the retail department, and the work in the sales
15 department?
16 A No.
17 Q Do you know when you stopped working at
18 Wierd Stuff?
19 A I'm trying to put the time line together in
20 my head. About '93, '94.
21 Q Did you hold any other jobs while you
22 worked at Wierd Stuff?
23 A No.
24 Q What was your next job after Wierd Stuff?
25 A I started my own company.

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1 Q Do you know when you started your company?
2 A '93, '94.
3 Q What was the name of that company?
4 A Strata Remarketing.
5 Q And what business was Strata Remarketing
6 in?
7 A We sold excess computer hardware and
8 software.
9 Q Was it a corporation?
10 A Correct.
11 Q And did you own the corporation?
12 A It was me and a partner.
13 Q What was the name of your partner?
14 A David Hu.
15 Q How do you spell David's last name?
16 A H-u.
17 Q Did you hold a position at Strata?
18 A Vice president.
19 Q What percentage of Strata did you own?
20 A I believe 30 percent.
21 Q Is Strata still in existence?
22 A No.
23 Q When did it cease to exist?
24 A I'm not exactly sure because I ended up
25 leaving the company.

9 (Pages 30 to 33)

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1 Q When did you leave the company?
2 A '96.
3 Q Did Strata sell Microsoft software?
4 A Yes.
5 Q What titles?
6 A Office, Server, Microsoft Bookshelf,
7 Office, Windows.
8 Q Did you work at Strata?
9 A Yes.
10 Q And what were your duties?
11 A I ran the sales department and the
12 purchasing.
13 Q What do you mean by "purchasing"?
14 A I procured product. I purchased the
15 product from vendors.
16 Q Did the product you purchased include
17 Microsoft software?
18 A Yes.
19 Q And did it include the Microsoft software
20 titles you just testified Strata sold?
21 A Yes.
22 Q Who did Strata purchase Microsoft software
23 from?
24 A I mean, we bought them from various
25 brokers. Some people I don't remember anymore.

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1 Liquidators. I mean, it's been a long time.
2 Q Did you hold any other jobs when you worked
3 at Strata?
4 A No.
5 Q And what was your next job after Strata?
6 A Then I went to go work for a company called
7 SoftCAT.
8 Q Soft what?
9 A SoftCAT.
10 Q What kind of business was SoftCAT engaged
11 in?
12 A They were a computer software liquidator
13 that focused on selling products to the mass
14 merchants.
15 Q What do you mean by "mass merchants"?
16 A CompUSA, Frys, Costco.
17 Q What was your position at SoftCAT?
18 A In sales.
19 Q Did you hold any other positions in
20 SoftCAT?
21 A I helped with purchasing from time to time.
22 Q Did you own any of SoftCAT?
23 A No.
24 Q When did you leave SoftCAT?
25 A '97.

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1 Q Did you hold any other jobs while you
2 worked at SoftCAT?
3 A No.
4 Q And what was your next job after SoftCAT?
5 A Then that's when I started my own company.
6 Q What was that company?
7 A Intrax Group.
8 Q When did you start Intrax Group?
9 A '97.
10 Q And have you worked at Intrax Group
11 continuously since 1997?
12 A Yes.
13 Q We are going to come back to the Intrax
14 Group in greater detail in a little bit, but I would
15 like to ask: During the time you worked at Intrax
16 Group, from 1997 to the present, have you held any
17 other jobs?
18 A I also owned another company called Apex
19 Motor Sports, which modified domestic performance
20 vehicles.
21 Q And was Apex Motor Sports a corporation
22 separate from Intrax?
23 A It was part of Intrax.
24 (Attorney-client conference.)
25 THE WITNESS: Okay. To clarify it, Intrax

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1 owned Apex. I didn't own Apex Motor Sports. The
2 corporation owned Apex.
3 BY MR. ROLLER:
4 Q And was Apex a separate corporation?
5 A It was not a separate corporation. It was
6 a subsidiary of Intrax.
7 (Attorney-client conference.)
8 BY MR. ROLLER:
9 Q Is Surplus Computers part of Intrax?
10 A Yes.
11 You know, I did not finish answering the
12 previous question.
13 Q Okay.
14 A I also worked -- after the company filed
15 bankruptcy, it wasn't able to support me, so I went
16 to go work for a Ford dealership.
17 Q When did you do that?
18 A Maybe October or November of last year.
19 Q Since you started Intrax in 1997, aside
20 from your work at Intrax or -- Intrax or Surplus or
21 Apex Computers and your work at the Ford dealership,
22 have you held any other jobs?
23 A Well, I currently own another business.
24 It's an automotive repair business.
25 Q What's the name of that business?

10 (Pages 34 to 37)

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1 A TPS.
2 Q Is TPS a corporation?
3 A Yes.
4 Q When was that corporation founded?
5 A Three months ago.
6 Q Do you own all of it?
7 A No.
8 Q Who else owns it?
9 A My partner, Dave Godeloson.
10 Q How do you spell Mr. Godeloson's last name?
11 A G-o-d-e-l-o-s-o-n.
12 Q What percentage do you own?
13 A We own 50/50.
14 Q What does TPS do?
15 A Like I said, we are a general maintenance
16 shop, so we repair cars, maintenance, and we also
17 modify and upgrade domestic performance vehicles,
18 like Corvettes, Mustangs, and Camaros.
19 Q Where is TPS located?
20 A In Campbell.
21 Q Where is that?
22 A It's actually in the same building -- it's
23 in the same building --
24 MR. DILLICK: Where is it?
25 THE WITNESS: 180 East Sunnyoaks, Campbell,

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1 California, Building No. 3. Sorry about that.
2 BY MR. ROLLER:
3 Q Are you paid by TPS?
4 A Yes.
5 Q What are you paid monthly?
6 A Thousand dollars a month.
7 Q Do you work there?
8 A Yes.
9 Q What kind of work do you do?
10 A I talk to the customers. I do the
11 purchasing, and I also do the sales to the customers
12 that come in.
13 Q What are you paid at the Ford dealership
14 per month?
15 A It varied because I was on commission.
16 Q You are still working there?
17 A No.
18 Q When did you stop?
19 A About four months ago.
20 Q And what was the range in what you were
21 monthly paid?
22 A Anywhere between 5- and \$7,000.
23 Q Aside from -- from the time you founded
24 Intrax in 1997, aside from your work at Intrax,
25 including that work at Apex and Surplus Computers and

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1 your work at the Ford dealership and your work at
2 TPS, have you held any other jobs?
3 A No.
4 Q Are you married?
5 A Yes.
6 Q Do you have children?
7 A Yes.
8 Can I take a -- I'm sorry.
9 MR. DILLICK: You want a break?
10 THE WITNESS: I just want a break because
11 I'm getting a lot of calls from the office.
12 MR. ROLLER: That's fine. Is five minutes
13 okay?
14 THE WITNESS: Yeah, five minutes is fine.
15 (Recess taken from 9:44 to 9:48 a.m.)
16 BY MR. ROLLER:
17 Q The next question I'm going to ask -- I
18 want you to answer the question, but I don't want you
19 to tell me what your attorney said, so this is my
20 question: Did you -- and let your attorney make an
21 objection if necessary before answering the question.
22 To prepare for this deposition, did you
23 talk with your attorney? I don't want you to tell me
24 what you said if you did.
25 MR. DILLICK: Just "yes" or "no."

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1 THE WITNESS: Yes.
2 BY MR. ROLLER:
3 Q Was anyone else present in person when you
4 spoke with your attorney?
5 A No.
6 Q Was anyone else present by telephone when
7 you spoke with your attorney?
8 A No.
9 Q Have you talked with anyone else about this
10 deposition?
11 A I told my brother that I was coming to this
12 deposition. That's about it.
13 Q What did you tell your brother?
14 A I just told him that it was a deposition
15 regarding the Microsoft case.
16 Q Did you tell him anything else?
17 A No.
18 Q What did he say?
19 A He says, "Oh." He goes -- he basically
20 say, "Hopefully we can get this thing resolved and
21 get it passed us."
22 Q What's your brother's name?
23 A Edward Mak.
24 Q Why did he say "get it passed us"?
25 A Because it basically has consumed and

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 really ruined our lives. 2 Q Have you talked with anyone else? 3 A No. 4 Q Why has it consumed your brother's life? 5 A He works at Surplus Computers with me, so 6 it's affected him a lot also. 7 Q Aside from talking with your attorney and 8 talking with your brother about this deposition, have 9 you talked to anyone else about the deposition? 10 A I told my wife I was coming to this thing. 11 Q What did she say? 12 A She says, "Good luck." 13 Q Aside from your wife, your brother, and 14 your attorney, have you talked to anyone else about 15 this deposition? 16 A No. 17 Q Have you looked at any documents to prepare 18 for this deposition? 19 A No -- 20 MR. DILLICK: Other than, of course, what 21 he might have looked at with his attorney? You are 22 not asking him to go into whatever he and his 23 attorney might have done to prepare for the depo, are 24 you? 25 BY MR. ROLLER:</p>	<p style="text-align: right;">Page 44</p> <p>1 Q Aside from the documents that you looked at 2 with your attorney, have you looked at any documents 3 outside of the presence of your attorney? 4 A Yes. 5 Q What documents? 6 A Just invoices of what we purchased. 7 Q Anything else? 8 A No. 9 Q Have you done anything else to prepare for 10 this deposition? 11 A No. 12 Q I believe you have testified that Apex 13 Motor Sports and Surplus Computers are a part of the 14 Intrax Group; is that accurate? 15 A Correct. 16 Q Are there any other businesses that are 17 part of the -- of Intrax Groups aside from those two? 18 A Software and Stuff. 19 Q What is Software and Stuff? 20 A Software and Stuff started out before 21 Surplus Computers, so before there was Surplus 22 Computers, there was Software and Stuff. 23 Q Was Software and Stuff started in 1997? 24 A Correct. 25 Q And when did Software and Stuff cease to</p>
<p style="text-align: right;">Page 43</p> <p>1 Q I'm asking: Have you looked at documents? 2 MR. DILLICK: Including whatever I may 3 have -- 4 THE WITNESS: I have looked at documents, 5 invoices, stuff -- 6 MR. DILLICK: Hold on a second. 7 Are you asking him about what he did to 8 prepare with his attorney, or are you asking him to 9 exclude that? 10 MR. ROLLER: I'm asking him whether he has 11 looked at documents. 12 MR. DILLICK: Okay. So you can say "yes" 13 or "no." 14 THE WITNESS: Yes. 15 BY MR. ROLLER: 16 Q Did you look at documents with your 17 attorney? 18 A Yes. 19 Q What were those documents? 20 MR. DILLICK: No, you don't get to ask him 21 that. 22 MR. ROLLER: Are you instructing him not to 23 answer? 24 MR. DILLICK: Yeah. 25 BY MR. ROLLER:</p>	<p style="text-align: right;">Page 45</p> <p>1 operate? 2 A Maybe in 2000, when we were able to 3 purchase the name Surplus Computers. 4 Q Why did Intrax stop doing business as 5 Software and Stuff? 6 A Surplus Computers just sounds a lot more 7 catchy than Software and Stuff, and it's easier to 8 remember. 9 Q Aside from Apex Motor Sports, Surplus 10 Computers, and Software and Stuff, are there any 11 other businesses that are now or have been a part of 12 the Intrax Group? 13 A No. 14 Q About when did Surplus Computers start? 15 A I believe I told you about 2000. 16 Q And back at the time, Surplus Computers 17 started -- what kind of business was it engaged in? 18 A We did wholesale, but a lot of retail. We 19 also did a lot of online business. We had a retail 20 store. 21 Q What did Surplus Computers sell, whether 22 wholesale, retail, or online? 23 A Computer hardware, used computers, hard 24 drives, motherboards, modems, computer software, 25 gadgets, miscellaneous general merchandise. I mean,</p>

12 (Pages 42 to 45)

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1 we are a liquidator, so we basically sell what we get
2 our hands on.
3 Q Back when Surplus Computers started, did it
4 sell Microsoft software?
5 A Yes.
6 Q Between the time Surplus Computers started
7 and April of 2007, did Surplus Computers engage in
8 the same general business?
9 MR. DILLICK: Could you read that back,
10 please.
11 (Record read by the Reporter as follows:
12 "QUESTION: Between the time Surplus
13 Computers started and April of 2007, did
14 Surplus Computers engage in the same
15 general business?")
16 THE WITNESS: Yes.
17 BY MR. ROLLER:
18 Q Did it change in any way in those years?
19 A What do you mean by that?
20 Q Were there products, for example, that
21 Surplus Computers stopped selling in those years?
22 MR. DILLICK: Objection, vague.
23 THE WITNESS: I don't really understand
24 what you are trying to ask me.
25 MR. DILLICK: It might be -- this might

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1 help. It might explain -- did Mike explain to you
2 they are liquidators and maybe -- because of the
3 nature of the liquidation business, maybe it would be
4 helpful if he just explained to you what the
5 liquidation business is, if that -- you don't have
6 to.
7 MR. ROLLER: That may be helpful. That's a
8 valuable suggestion. Thank you.
9 THE WITNESS: Okay. What we do, companies,
10 whether it's Fujitsu, IBM, various -- even Intel,
11 various universities, when they have excess
12 inventory, whether it's software or hardware or maybe
13 furniture, they will call us and say, "You know,
14 Mike, we have a room here that's full of computers
15 and miscellaneous parts. Would you like to come down
16 and take a look and see what we have for sale?" So
17 then I would go down there, make an offer, and they
18 would purchase it.
19 Or companies would send me a list and say,
20 "Mike, we have this in our inventory. Would you like
21 to purchase it? you know, "Could you make us a bid?"
22 Or -- or they would tell me what they want for it and
23 then the negotiation process would start.
24 MR. ROLLER: I see.
25 Q So is it fair to say that between the time

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1 Surplus Computers was started and April of 2007, it
2 sold products, including software, that it thought it
3 could get at a decent price and resell at a profit?
4 A Correct.
5 Q Does Surplus Computers continue to do that?
6 A Yes.
7 Q Does Surplus -- well, let me back up.
8 A Let me rephrase that. We continue to do
9 that except we do not sell any Microsoft product at
10 all, not even from distribution. We completely
11 stopped doing it.
12 Q When did you stop selling Microsoft
13 products?
14 A We stopped selling Microsoft products after
15 we were hit with the lawsuit.
16 Q Before the lawsuit -- and by that you are
17 talking about this lawsuit here that we are having
18 this deposition in?
19 A Correct.
20 Q Prior to that lawsuit, what kinds of
21 Microsoft products did Surplus Computers sell?
22 A Well, we sold Student Media. We sold OEM
23 product. We would sell retail box product. We would
24 sell DSP product.
25 Q When you say "Student Media," what do you

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1 mean by that?
2 A It was software that was on -- it was
3 software that was on some CDs. I don't know if you
4 have a sample here.
5 MR. ROLLER: We are going to do something a
6 little out of order.
7 Would you please mark that as Exhibit 1.
8 (Exhibit No. 1 was marked for
9 identification by the Court Reporter.)
10 BY MR. ROLLER:
11 Q Mr. Mak, the Court Reporter has handed you
12 some papers that have been marked as Exhibit 1.
13 Do you recognize those papers?
14 A Yes.
15 Q What are they?
16 A It's a Deposition Notice.
17 Q For this deposition?
18 A Correct.
19 MR. ROLLER: Would you please mark that as
20 Exhibit 2.
21 (Exhibit No. 2 was marked for
22 identification by the Court Reporter.)
23 BY MR. ROLLER:
24 Q Mr. Mak, the Court Reporter has handed you
25 two sheets of paper that have been marked Exhibit 2,

13 (Pages 46 to 49)

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1 and I'll represent to you that the --
2 A There's two sheets, you said?
3 Q Yes, two sheets.
4 A Okay.
5 Q I'll represent to you that these are
6 photocopies of software that were purchased by an
7 investigator working for Microsoft from the Intrax
8 Group.
9 And I'd like you to look at the first page
10 and tell me: Is this an example of what you are
11 referring to when you say "Student Media"?
12 A Yes.
13 Q And how do you know that it's Student
14 Media?
15 A It says "Student Media" right on it.
16 Q And do you see -- below where it says
17 "Student Media," do you see the text there?
18 A Yes.
19 Q Can you read that?
20 A It says "Student Media."
21 Q The smaller text below "Student Media."
22 A "All use subjective license media," is that
23 what you are talking about?
24 Q Yes.
25 A "Do not make illegal copies of this disk.

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1 Not for retail or OEM distribution. Not for resale."
2 Q Did the Intrax Group resell Student Media
3 software?
4 A Yes.
5 MR. DILLICK: Did they sell it?
6 BY MR. ROLLER:
7 Q Resell Student Media?
8 A What do you mean "resell"? Sell to
9 endusers?
10 Q Sell to anybody.
11 A Yes.
12 Q I'd like you to turn to the second page of
13 Exhibit 2. And I'll represent to you that this is
14 the reverse side of the first page.
15 Could you please look at that and tell me
16 whether you recognize that.
17 Have you seen that before?
18 MR. DILLICK: Has he seen this particular
19 label?
20 THE WITNESS: This exact label?
21 BY MR. ROLLER:
22 Q Let's not say the exact label.
23 Have you seen similar labels?
24 A I've seen similar labels.
25 Q And are similar labels on the reverse side

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1 of Student Media packs?
2 A I believe so.
3 Q Okay. What caused you to say that?
4 A I just recognize it.
5 Q Do you see on the text where it says
6 "Student Media CD" on the second page?
7 A Yes.
8 Q Okay. What is OEM software?
9 A I believe OEM software is software which is
10 made for some of the large manufacturers that
11 Microsoft cut special deals with to give them a
12 really, really low price.
13 Q For example, Dell or Hewlett-Packard?
14 A Correct.
15 Q And is OEM software ever marked with the
16 name of the computer manufacturer that distributes
17 it?
18 A It is.
19 Q Including the OEM software sold -- some of
20 the OEM software sold by the Intrax Group?
21 A Correct. Sometimes it is; sometimes it's
22 not marked.
23 Q What is DSP software?
24 A DSP software is sold by people like Dose,
25 Mob (phonetic), some of your authorized distributors,

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1 and some of your nonauthorized distributors sell the
2 product, and it's sold to retailers so they can sell
3 it to the general public.
4 Q And when you say sold by your authorized
5 resellers, you are referring to Microsoft-authorized
6 resellers?
7 A That's correct. Let's say
8 Microsoft-authorized distributors.
9 Q Okay. Have you heard of System Builder
10 software?
11 A You know, Microsoft has so many
12 different --
13 MR. DILLICK: Have you heard of System
14 Builder software?
15 THE WITNESS: Yes.
16 BY MR. ROLLER:
17 Q What have you heard about System Builder
18 software?
19 A I'm really confused about the way they
20 label their stuff; because a lot of times, the
21 software is the same and it -- and when you look at
22 it, it looks identical.
23 Q But what have you heard about System
24 Builder software?
25 A I really haven't heard much.

14 (Pages 50 to 53)

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1 Q Do you recall what you have heard?
2 A No.
3 Q I'd like to talk a little bit about Apex
4 Motor Sports.
5 I believe you testified earlier that Apex
6 Motor Sports does servicing of high-performance
7 domestic vehicles; is that correct?
8 A Mm-hmm.
9 Q I don't know anything about that.
10 What kind -- what does Apex Motor Sports
11 due to the high-performance vehicles?
12 A We rebuild engines. We actually build race
13 cars. We put superchargers on them. We have great
14 suspensions.
15 Q And so are the customers collectors of
16 high-performance cars?
17 A They are collectors or enthusiasts of
18 high-performance cars.
19 Q And can you name some of the
20 high-performance cars?
21 A Corvette, Mustangs -- I'm sure you have
22 seen them in Seattle. When you see a lot of
23 Corvettes run by, it probably has a modified exhaust
24 or some upgrade engine work. I'm sure you have seen
25 all the Mustangs roaming around Seattle that are

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1 really loud. You know, that's the kind of stuff that
2 we -- completely different than what Intrax does.
3 Q How did you get involved in that business?
4 A I've always been a car enthusiast, and what
5 happened is the owner of Apex was moving to Arizona,
6 so he sold me the company.
7 Q Is Apex still operating within the Intrax
8 Group?
9 A No, they are out of business.
10 Q And when did they go out of business?
11 A Earlier this year.
12 Q Why?
13 A I sold it when all this was happening, all
14 the lawsuits and everything and bankruptcy. I just
15 couldn't -- there was too much on my plate, so I sold
16 off the business to some friends, hoping to, one of
17 these days, buy it back from them and when things
18 settled down. Unfortunately --
19 MR. DILLICK: He just asked you why it
20 closed.
21 THE WITNESS: Well, they ruined the
22 business. My friends who I brought in to help me run
23 the business, you know, who I sold the business to,
24 they basically ruined the business.
25 BY MR. ROLLER:

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1 Q And when you say you sold the business,
2 were there physical things you sold?
3 A We sold the assets. We sold the customer
4 base. We sold the actual business. Everything that
5 was part of Apex went to them.
6 Q And what kind of physical assets were
7 there?
8 A You know, auto repair equipment, no
9 computer software. I mean, you know, it's just
10 anything related to the automotive business.
11 Q And how much was it sold for?
12 A We had some open receivables, so we just --
13 MR. DILLICK: How much was it sold for?
14 THE WITNESS: \$90,000.
15 BY MR. ROLLER:
16 Q You mentioned earlier open receivables.
17 Did Intrax retain those -- the rights to
18 those receivables or were those sold as well?
19 A No, I'm sorry, let me rephrase that. We
20 had payables of \$90,000, not receivables. We had
21 payables.
22 Q And so did the -- those are -- that was
23 money that Apex owed vendors --
24 A Owed, correct.
25 Q And were those liabilities transferred to

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1 the new ownership as well?
2 A Correct.
3 Q Do you know about what the value of those
4 liabilities were at the time Apex was sold?
5 A I assume about \$90,000.
6 Q So did Intrax Group get any cash from the
7 new ownership group?
8 A No.
9 Q The new ownership group simply agreed to
10 assume Apex's liabilities?
11 A Correct.
12 Q Who did you sell it to?
13 A To Open Rocket.
14 Q Is Open Rocket a corporation?
15 A I believe it is.
16 Q And who owns Open Rocket?
17 A Kenny Macomi (phonetic) and Stephen Fong.
18 Q Stephen Fong, F-o-n-g?
19 A Correct.
20 Q Okay. Does Surplus Computers continue to
21 obtain new inventory?
22 A Yes.
23 Q Is that inventory -- what kind of inventory
24 does Surplus Computers continue to obtain?
25 A Used computers, computer gaming equipment,

15 (Pages 54 to 57)

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1 computer peripherals. Same stuff we have always
2 bought.
3 Q Software?
4 A Some software. Very little.
5 Q But not Microsoft software?
6 A No, not even one piece.
7 Q What percentage of the Intrax Group do you
8 own?
9 A 70 percent.
10 Q 70?
11 A 70, 7-0.
12 Q Who owns the remaining 30 percent?
13 A My brother.
14 Q Your brother Edward?
15 A Correct.
16 Q Anybody else?
17 A No.
18 Q Have you heard of a company called the
19 Grand Intrax Corporation?
20 A No.
21 Q Have you heard of a man named Benjamin Yen,
22 Y-e-n?
23 A No.
24 Q Okay. Have you heard of a company called
25 Intrax Suspension Technology?

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1 A I believe -- yes, I have.
2 Q What have you heard about Intrax Suspension
3 Technology?
4 A They just make suspensions for cars.
5 Q How do you know that?
6 A Because I'm a car enthusiast.
7 Q Have you heard of a person named Scott
8 Hartman?
9 A No.
10 Q Where did the name Intrax come from?
11 A It's just a name that we thought of.
12 Q Has Intrax Suspension Technology ever
13 contacted you about your use of the name Intrax?
14 A No.
15 Q Do you know if anyone has ever tried to
16 contact Intrax Suspension Technology and, in fact,
17 contacted the Intrax Group?
18 A Not that I'm aware of.
19 Q And are you aware of anybody trying to
20 contact the Intrax Group and actually contacting
21 Intrax Suspension Technology?
22 A No.
23 Q Have you ever had any conversations with
24 anyone at Intrax Suspension Technology?
25 A No.

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1 Q Does the Intrax Group have any officers;
2 president, vice president?
3 A Just me and my brother.
4 Q And what position do you hold?
5 A I hold the president.
6 Q What position does Edward hold?
7 A Vice president.
8 Q Are there any other officers of Intrax
9 Group?
10 A Raymond Chau used to be, but he's no longer
11 with the company.
12 Q Is Raymond Chau C-h-a-u?
13 A Correct.
14 Q And what position did he hold?
15 A He was a vice president also.
16 Q When was he vice president?
17 A Up until November of last year or October
18 of last year.
19 Q And did he cease to be a vice president
20 when he left?
21 A Yes.
22 Q Any others who have held an officer
23 position in the Intrax Group?
24 A No.
25 Q Does the Intrax Group have a board of

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1 directors?
2 A Me and my brother.
3 Q Anyone else?
4 A That's all for now.
5 Q Has there -- aside from you and your
6 brother, has there ever been another member of the
7 Intrax Group board of directors?
8 A Raymond Chau was.
9 Q And was that the same time he was vice
10 president?
11 A Mm-hmm.
12 Q When did Mr. Chau become vice president?
13 A I don't remember.
14 Q Do you remember when he became a part of
15 the board of directors?
16 A I don't remember.
17 Q Mr. Mak, in discovery earlier in this case,
18 Microsoft served discovery requests on your attorney,
19 and you and your attorney worked together and
20 answered some of those discovery requests. And one
21 of the things that Microsoft asked about were Intrax
22 employees, and rather than ask you to name all the
23 Intrax employees, I'm just going to go through the
24 list that your attorney provided in response to
25 discovery and, at the end, ask if there are any other

16 (Pages 58 to 61)

Page 62

1 current or former employees.
2 A Okay.
3 Q In the relevant answer to Microsoft's
4 interrogatory, you identified Stephen Fong as an
5 employee or former employee of Intrax.
6 A Mm-hmm.
7 Q When was Mr. Fong employed at Intrax?
8 A He recently came back and he -- he recently
9 came back to work with us.
10 Q When did he start working with you?
11 A I don't remember.
12 Q Do you recall if it was within a year or
13 two of when Intrax started?
14 A No. He came several years afterwards. I
15 don't remember the exact date and time that he
16 started for us.
17 Q When did he leave?
18 A When we went bankrupt.
19 Q And when did he return?
20 A About three, four months ago.
21 Q Prior to the time of the bankruptcy, what
22 were Mr. Fong's duties at Intrax?
23 A He was -- he helped with purchasing and he
24 was solely responsible for our eBay sales, our eBay
25 auctions.

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1 Q Any other duties?
2 A No.
3 Q And when you say he helped with purchasing,
4 what did he do?
5 A He purchased flash memory, flash memory
6 like SD cards and -- you know, that's his specialty,
7 is flash memory, USB thumb drives, things like that.
8 Q Did he purchase anything else?
9 A I mean, I'm sure he did. I just don't know
10 what it -- I just don't remember at this time.
11 Q Do you remember if he purchased software?
12 A He may have, but I don't remember.
13 Q Who was Mr. Fong's boss?
14 A Me.
15 Q So did you have the ability to direct
16 Mr. Fong's activities at Intrax?
17 A He pretty much -- I just oversaw what he
18 did. He pretty much did what he did.
19 Q But if you told him to do something, would
20 he do it?
21 A I believe so.
22 Q Do you know how to contact Mr. Fong?
23 A Yes.
24 Q How?
25 A I can give you his cell phone. That's

Page 64

1 (408) 202-5029.
2 Q Do you know his address?
3 A I do not. I don't know it off the top of
4 my head.
5 Q Do you have it available?
6 A I do have it available.
7 Q What kind of -- strike that, please.
8 What did Intrax sell on eBay?
9 A Computer products. We never sold Microsoft
10 product on eBay.
11 Q When did Intrax's eBay sale start?
12 A Oh, that's a long time. I don't remember.
13 I would say it's been over ten years.
14 Q Did Intrax sell software through eBay?
15 A No.
16 Q Why not?
17 A We just didn't. It was just our policy.
18 We did not.
19 Q Another person listed in your discovery
20 responses as a employee or former employee was Larry
21 Fung.
22 A Yes.
23 Q Do you know when Mr. Fung started working
24 at Intrax?
25 A I don't remember.

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1 Q Do you know about when?
2 A Four, five years ago, maybe six years ago.
3 I'm not sure.
4 Q Is Mr. Fung still employed by Intrax?
5 A No, he was laid off.
6 Q When was he laid off?
7 A I don't remember.
8 Q Was it before the bankruptcy?
9 A I think it was a little bit before that.
10 Q Do you know if it was before Microsoft
11 filed this lawsuit in April of 2007?
12 A No, it was probably after.
13 Q What were Mr. Fung's duties at Intrax?
14 A He was in customer service.
15 Q What did he do in customer service?
16 A Made sure commerce received the right
17 product; you know, made -- people ask for tracking
18 numbers; if there was a defective product, he would
19 arrange for the exchange.
20 Q Did he do anything else in customer
21 service?
22 A No, that's about it.
23 Q Did he -- aside from his customer service
24 duties, did he have any other duties?
25 A No.

17 (Pages 62 to 65)

Michael Mak

June 25, 2008

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1 Q Who was Mr. Fung's boss?
 2 A Edward -- actually, his boss was Raymond
 3 Chau.
 4 Q If you as president of the Intrax Group
 5 asked Mr. Fung to do something at the Intrax Group,
 6 would he do it?
 7 A I believe he would.
 8 Q Do you know how to contact Mr. Fung?
 9 A I do not.
 10 Q Your brother is another person listed in
 11 the discovery response as working at or having had
 12 worked at Intrax.
 13 When did he start to work at Intrax?
 14 A Same time, same time I did. We started the
 15 company together.
 16 Q And you testified earlier that he's a 30
 17 percent owner.
 18 Has he always been a 30 percent owner?
 19 A Yes.
 20 Q Does Mr. -- your brother Edward, does he
 21 still work at Intrax?
 22 A Yes.
 23 Q And what are his duties?
 24 A He's just in shipping and receiving.
 25 That's all he does.

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1 Q Is he still the -- a vice president of
 2 Intrax?
 3 A Yes.
 4 Q What does he do in shipping and receiving?
 5 A When products come in, he checks them. He
 6 makes sure all the counts and quantities are there,
 7 makes sure the products are in good shape. And then
 8 when we get orders, he makes sure that our shipping
 9 staff ships it all out. That's what he does,
 10 shipping and receiving.
 11 Q Does he do any purchasing for Intrax?
 12 A No, none.
 13 Q Does he do any sales for Intrax?
 14 A None. He's not involved with the
 15 purchasing or sales process at all.
 16 Q Who is his boss?
 17 A Well, I mean, I would assume that would be
 18 me.
 19 Q Do you know how to contact your brother?
 20 A Yes.
 21 Q What is his telephone number?
 22 A (408) 667-0539.
 23 Q Do you know his address?
 24 A Yes.
 25 Q What is it?

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1 A I don't know -- I mean, I don't have it off
 2 the top of my head.
 3 Q Carlos Vasquez, V-a-s-q-u-e-z --
 4 A Correct.
 5 Q -- was mentioned as an employee or former
 6 employee of Intrax.
 7 When did Mr. Vasquez start working at
 8 Intrax?
 9 A About four or five years ago.
 10 Q Is he still employed by Intrax?
 11 A Yes.
 12 Q What are his duties at Intrax?
 13 A He helps me with purchasing and he -- he's
 14 basically -- he basically prepares the -- when the
 15 orders come through our Website, he prepares the
 16 invoices so that our shipping department will pick
 17 them up, will pick up the product.
 18 Q How does he help you with purchasing?
 19 A Well, some products like motherboards and
 20 CPUs and memory, that kind of product, he helps with
 21 purchasing that product.
 22 Q Does he now or has he in the past helped
 23 with purchasing software?
 24 A He does. He has, but he has never
 25 purchased Microsoft product except for OEM or DSP

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1 products from authorized distributors.
 2 Q So he hasn't purchased -- he hasn't
 3 purchased Student Media on Intrax's behalf?
 4 A No, he's never purchased Student Media.
 5 Q Who is Mr. Vasquez's boss?
 6 A Me.
 7 Q So if you told him to do something at
 8 Intrax, he would do it?
 9 A Correct.
 10 Q Raymond Chau is listed as an employee or
 11 former employee.
 12 When did Mr. Chau, C-h-a-u, begin working
 13 at Intrax?
 14 A Six, seven years ago.
 15 Q Is he still employed by Intrax?
 16 A No.
 17 Q When did he leave Intrax?
 18 A He left in about October.
 19 Q Why did he leave?
 20 A All the employees had to take a pay cut
 21 because of the lawsuit, and he wasn't willing to take
 22 the pay cut, or he couldn't afford to.
 23 Q Why did the employees have to take a pay
 24 cut as a result of the lawsuit?
 25 A I mean, our business was hurt by the

18 (Pages 66 to 69)

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1 statements that Microsoft made in the press about the
2 lawsuit, so some customers were afraid to buy product
3 from us, any product at all.
4 Q How do you know that?
5 A Our sales dropped substantially and
6 customers told us that.
7 Q Which customers told you that?
8 A Our retail customers, customers who would
9 buy computers from us.
10 Q Do you know any of their names?
11 A No, I do not.
12 Q Do you know if Intrax has any records of
13 customers telling it why they ceased purchasing
14 products from it?
15 A I don't know.
16 Q What were Mr. Chau's duties at Intrax?
17 A He managed the day-to-day operation, and he
18 also helped with purchasing.
19 Q What do you mean by "managed the day-to-day
20 operation"?
21 A Personnel, making sure payroll, you know,
22 all that stuff.
23 Q What do you mean by "personnel"?
24 A Let's say at your law firm, you know,
25 somebody wants to take a vacation, you have a

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1 personnel director. That's what Ray did, something
2 like that.
3 Q Did you say he also assisted in purchasing?
4 A Correct.
5 Q What products did he assist purchasing?
6 A You know, he had some vendors that he dealt
7 with, and once in a while, he would help assist in
8 purchasing, but the vast majority of the times I did
9 all the purchasing.
10 Q Do you know what products he would assist
11 in purchasing?
12 A I don't remember.
13 Q Do you remember if he assisted in
14 purchasing Microsoft software?
15 A Probably just DSP and OEM product, but I'm
16 not sure.
17 Q Do you know -- do you know any of the
18 vendors that Ray helped purchase Microsoft products
19 from?
20 A No.
21 Q Who was Ray's boss?
22 A Me and Ed.
23 Q If you told Ray to do something at Intrax,
24 would he do it?
25 A Yes.

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1 Q Do you know how to contact Ray?
2 A Yes.
3 Q How?
4 A I have his cell phone number at home.
5 Q Do you know his address?
6 A Not off the top of my head.
7 Q Do you have his address at home?
8 A I believe I do.
9 MR. ROLLER: Off the record.
10 (Recess taken from 10:33 to 10:34 a.m.)
11 BY MR. ROLLER:
12 Q Do you know how to contact Mr. Vasquez?
13 A Yes. He's still employed at the company.
14 Q Do you know his phone number?
15 A Actually, he just called me.
16 (408) 417-8010.
17 Q Do you know his home address?
18 A No, not off the top of my head.
19 Q And do you have that record --
20 A At my office I do.
21 Q Another person mentioned in the discovery
22 response as an employee or past employee of Intrax is
23 Gustavo Perez.
24 A He's still currently employed.
25 Q When did he start working at Intrax?

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1 A I don't remember. Five years ago maybe.
2 Q What are Mr. Perez's duties?
3 A He's just in shipping and receiving.
4 Q Are his duties in shipping and receiving
5 the same as your brother's?
6 A They are probably more limited than what my
7 brother does.
8 Q Why?
9 A Because he's not a manager.
10 Q Is your brother Mr. Perez's boss?
11 A Yes.
12 Q Are you also Mr. Perez's boss?
13 A Yes.
14 Q And if you told Mr. Perez to do something
15 at Intrax, would he do it?
16 A Yes.
17 Q Rosario Perez is another person who's
18 mentioned.
19 When did she start working at Intrax?
20 A He started the same time as Gustavo.
21 Q Rosario?
22 A Rosario.
23 Q Is he related to Mr. Perez?
24 A He's Gustavo's father.
25 Q Okay. Rosario is Gustavo's father?

19 (Pages 70 to 73)

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1 A Correct.
2 Q When did he start working at Intrax?
3 A About the same time.
4 Q As Gustavo?
5 A Mm-hmm.
6 Q Is he still employed by Intrax?
7 A Yes.
8 Q What are his duties?
9 A He ships product out.
10 Q Does he do anything else?
11 A No.
12 Q Who is Rosario's boss?
13 A Me and Ed.
14 Q And if you asked Rosario to do something at
15 Intrax, would he do it?
16 A Yes.
17 Q The next person mentioned is Jady, J-a-d-y,
18 Ngyuen, N-g-y-u-e-n?
19 A Yes.
20 Q When did Jady finish working at Intrax?
21 A I'm not sure.
22 Q Is Jady a she?
23 A She.
24 Q Is she still employed?
25 A Yes.

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1 Q What are her duties?
2 A She processes the orders and closes out the
3 credit card purchases, so she batches the orders at
4 the end of the day.
5 Q What do you mean by that, processes orders?
6 A Well, when orders comes through your
7 Website, it comes in a digital form, so you have to
8 print out an invoice to send to the customer, so
9 that's what she does.
10 Q Then what happens with that invoice?
11 A It gets taken to the warehouse and then the
12 warehouse takes the orders to ship out.
13 Q And does a copy of the invoice go with
14 the -- whatever product is shipped?
15 A Mm-hmm.
16 Q Does Intrax maintain a hard copy of the
17 invoice?
18 A Correct.
19 Q Does Intrax maintain an electronic copy of
20 the invoice?
21 A Correct.
22 Q I think you said Jody -- sorry, Jady closes
23 the credit cards?
24 A Mm-hmm.
25 Q What do you mean by that?

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1 A When an order is placed, you know, they --
2 what's called is they capture the funds on your
3 credit card. The funds on your credit card are put
4 on hold until we tell the credit card company it's
5 okay to charge us for them.
6 Q So she communicates with the credit card
7 company?
8 A Not really. I mean, she just -- you know,
9 it's all electronically done. She just presses a
10 button and clicks a button that says okay to close.
11 Q Aside from processing the order and closing
12 the credit cards, does Jady have any other duties at
13 Intrax?
14 A She helps with customer service.
15 Q How does she help with customer service?
16 A She issues RMAs. She makes sure products
17 are exchanged if customers aren't happy with them.
18 Q You say she issues and, I'm sorry --
19 A RMAs, return merchandise authorization.
20 Q What are those?
21 A Let's say you bought a hard drive from us
22 and the hard drive is defective; you want to return
23 it for an exchange. Then you need an RMA number.
24 Q So does she get the request from a customer
25 for a return?

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1 A Correct.
2 Q And she issues the number?
3 A Correct.
4 Q And then what happens?
5 A Then the customer ships us back the
6 product. We get the product back. If it's
7 defective, we send them another one. If it's not
8 defective, we send them back the old one.
9 Q Anything else aside from processing orders,
10 closing the credit cards, and working in customer
11 service that Jady does?
12 A No.
13 Q Who is Jady's boss?
14 A Carlos.
15 Q Carlos?
16 A Mm-hmm.
17 Q If you told Jady to do something at Intrax,
18 would she do it?
19 A Yes.
20 Q The next person mentioned as an employee or
21 former employee is Raymond Jeung, J-e-u-n-g.
22 A Jeung, yes.
23 Q And when did Mr. Jeung start working at
24 Intrax?
25 A Maybe four, five years ago.

20 (Pages 74 to 77)

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1 Q Does he still work at Intrax?
2 A No.
3 Q When did he leave?
4 A I'm not sure. It's been a couple years.
5 Q What were his duties?
6 A He was a retail store manager.
7 Q What would he do as the retail store
8 manager?
9 A Assist with customers, make sure the retail
10 store was stocked with product.
11 Q Is the retail store still open?
12 A No, it's -- it closed.
13 Q When did it close?
14 A In '06.
15 Q Do you know when in '06?
16 A December.
17 Q Why did it close?
18 A Business just wasn't as -- business wasn't
19 that great anymore.
20 Q Who was Raymond's boss?
21 A Me and Edward and Ray, Raymond Chau.
22 Q And if you told Raymond Jeung to do
23 something at Intrax, would he do it?
24 A Yes.
25 Q The last person listed is Eun, E-u-n,

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1 Chong, C-h-o-n-g.
2 A Yes.
3 Q Is Eun Chong a man or a woman?
4 A He's a man.
5 Q When did he start working at Intrax?
6 A I don't remember.
7 Q Does he still work at Intrax?
8 A He just came back to do some -- he's a
9 contractor right now to help us.
10 Q When did he -- was there a time before he
11 became a contractor that he left Intrax?
12 A He left maybe about six, seven months ago.
13 Q And he's returned as a contractor?
14 A Mm-hmm.
15 Q What does that mean?
16 A We needed someone to help test computers,
17 to test used and refurbished computers.
18 Q Before he left six to seven months ago,
19 what did Mr. Chong do? What were his duties?
20 A He tested computers. He made sure the
21 computers were ready to sell, and he also helped with
22 shipping and receiving.
23 Q Anything else?
24 A No.
25 Q Who was Mr. Chong's boss?

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1 A Edward.
2 Q If you told Mr. Chong to do something at
3 Intrax, would he do it?
4 A He would do it.
5 Q Aside from Intrax, Surplus Computers, Apex,
6 and TPS, have you owned any other businesses?
7 A No.
8 Do you mind if I take a break?
9 MR. ROLLER: Yeah, we can take a break.
10 Ten minutes?
11 THE WITNESS: Yeah, five, ten minutes.
12 (Recess taken from 10:44 to 10:59 a.m.)
13 BY MR. ROLLER:
14 Q Mr. Mak, are there any Websites that you
15 operate?
16 A Just Surplus --
17 MR. DILLICK: He, personally?
18 THE WITNESS: Me, personally?
19 BY MR. ROLLER:
20 Q Let's start with you, personally.
21 A No.
22 Q Are there any Websites that Intrax
23 operates?
24 A Just SurplusComputers.com.
25 Q There are no others?

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1 A No others.
2 Q Does TPS operate a Website?
3 A Tpsmotorsports.com.
4 Q And what's on that Website?
5 A Just information about the company.
6 Q Who maintains that Website?
7 A I do.
8 Q When did the Surplus Computers Website
9 start?
10 A Maybe the year 2000.
11 Q Was there a person at Intrax who was
12 assigned to maintain the Website?
13 A Kyman Jeung.
14 Q What was the first name?
15 A Kyman, K-y-m-a-n.
16 Q J-e-u-n-g?
17 A Mm-hmm.
18 Q Is he related to Raymond?
19 A It's his younger brother.
20 Q When did Kyman start working at Intrax?
21 A A long time ago.
22 Q And is he still employed in Intrax?
23 A No, he was laid off.
24 Q When was he laid off?
25 A Probably about a year ago.

21 (Pages 78 to 81)

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1 Q What were his duties?
2 A He maintained the Website.
3 Q Any others?
4 A That's it.
5 Q Who was Kyman's boss?
6 A Me.
7 Q And if you told Kyman to do something, he
8 would do it?
9 A Yes.
10 Q Including the content of the Website?
11 A Right.
12 Q We are going to come back to the Website in
13 just a second.
14 We discussed a number of Intrax's
15 employees, and until just now, Kyman was not one of
16 them, but let me read through who there was, and then
17 I'm going to ask if there was anybody else who we
18 haven't talked about.
19 Stephen Fong, Larry Fung, Edward Mak,
20 Carlos Vasquez, Raymond Chau, Gustavo Perez, Rosario
21 Perez, Jady Nguyen, Raymond Jeung, Kyman Jeung, and
22 Eun Chong.
23 A We had over --
24 MR. DILLICK: Wait. There's no question.
25 What's the question?

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1 BY MR. ROLLER:
2 Q Aside from those people I just mentioned
3 and yourself, are there other people who have worked
4 at Intrax?
5 A We have had over 300 employees in the past,
6 so I don't -- I don't remember all their names.
7 Q 300 at one time or over the course --
8 A No, no, over the course.
9 Q Are there any others you remember aside
10 from those that are listed here?
11 A No. Those are the ones I remember. Well,
12 I have one that's working for me now still and his
13 name is Delfino. I don't know what Delfino's last
14 name is, though.
15 Q At any one time, what's the number --
16 what's the maximum number of people that worked at
17 Intrax?
18 A 80.
19 Q And when did 80 people work at Intrax?
20 A Maybe three years ago.
21 Q Do you know about what Intrax's revenue was
22 on an annual basis when it employed 80 employees?
23 A I'm not exactly sure.
24 Q Do you have an estimate?
25 A It would be a guess.

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1 MR. DILLICK: Don't guess.
2 BY MR. ROLLER:
3 Q Is it more than one million?
4 A Yes.
5 Q Is it more than \$5 million?
6 A Yes.
7 Q More than \$10 million?
8 A Yes.
9 Q More than \$15 million?
10 A That I'm not sure.
11 Q When Intrax had the 80 employees, what did
12 most of them do?
13 A A lot of them helped in the retail store,
14 and a lot of them helped in the warehouse.
15 Q Did Kyman Jeung operate the Website in
16 2005?
17 A Yes.
18 Q In 2006?
19 A Yes.
20 Q In 2007?
21 A No.
22 Q He stopped working on the Website when he
23 left the company?
24 A Correct.
25 Q Who maintained the Website when Mr. Jeung

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1 left?
2 A Me and Carlos.
3 Q And do you and Carlos presently maintain
4 the Website?
5 A Yes.
6 Q Between 2005 and the present, could you
7 have directed that certain products be listed on the
8 Website?
9 MR. DILLICK: Go ahead.
10 THE WITNESS: I generally instruct --
11 MR. DILLICK: Wait.
12 THE WITNESS: Yes.
13 BY MR. ROLLER:
14 Q Did you direct that certain software be
15 listed on the Website?
16 A Yes.
17 Q Did you direct that Microsoft software be
18 listed on the Website?
19 A Yes.
20 Q Did you direct that Microsoft Student Media
21 software be offered for sale on the Website?
22 A Yes.
23 MR. ROLLER: I think we are on Exhibit 3.
24 (Exhibit No. 3 was marked for
25 identification by the Court Reporter.)

22 (Pages 82 to 85)

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1 BY MR. ROLLER:
2 Q Mr. Mak, you have been handed what's been
3 marked Exhibit 3, and I'm going to represent to you
4 that these were produced to Microsoft in the context
5 of the Intrax bankruptcy proceeding, and I'm also
6 going to represent to you that I had a paralegal in
7 my office mark these documents in a way we call
8 Bates-stamping, so if you look in the lower
9 right-hand corner --

10 A It's called what?

11 Q "Bates-stamping."

12 A "Bates-stamping"?

13 MR. DILLICK: Bate, B-a-t-e.

14 THE WITNESS: What does that mean?

15 MR. DILLICK: It's probably the
16 manufacturer of the system.

17 THE WITNESS: Okay.

18 BY MR. ROLLER:

19 Q So if you look in the lower right-hand
20 corner, there are a series of letters and numbers,
21 and these -- Exhibit 3 that I just handed you is
22 marked TR-000002 through 000054.

23 MR. DILLICK: Where is Bates 1? We don't
24 have a page 1.

25 MR. ROLLER: I don't think I need to give

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1 MR. ROLLER: That's right.

2 MR. DILLICK: So it was essentially a
3 transmittal letter.

4 MR. ROLLER: It was a transmittal letter,
5 but I don't recall whether it mentioned what was not
6 included but needs to be produced or not.

7 MR. DILLICK: Could I get a copy of it when
8 you get a chance? It could be from someone from your
9 office.

10 MR. ROLLER: Sure. Yeah.

11 MR. DILLICK: Thank you. Just send it to
12 me. Thanks.

13 BY MR. ROLLER:

14 Q Mr. Mak, could you take a couple minutes
15 and just quickly review those.

16 A Okay.

17 Q Do you recognize them?

18 A Yes.

19 Q And what are they?

20 A They are product pages for some Microsoft
21 product we sold.

22 Q Did you -- did you gather these for
23 production in the bankruptcy proceeding?

24 A What do you mean by that?

25 Q Did you identify what pages needed to be

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1 you a page 1. Let's go off the record and see if I
2 have it. I'm happy to give it to you if we do.

3 (Recess taken from 11:09 to 11:09 a.m.)

4 MR. ROLLER: Let's go back on the record.

5 Mr. Dillick asked about the document that
6 had been Bates-stamped page 1, or if there was such a
7 document. That is the cover letter that accompanied
8 these and other documents from Intrax's bankruptcy
9 counsel. I do not presently have a copy of that with
10 me.

11 MR. DILLICK: Okay. Was it anything other
12 than just a transmittal letter?

13 MR. ROLLER: I don't recall whether it was
14 in the letter or in the -- in an accompanying e-mail
15 where Intrax's bankruptcy counsel stated that they
16 had -- Intrax had yet to produce the sale-side
17 documents, but somewhere contemporaneous with getting
18 these documents, there was an acknowledgment that the
19 sale-side documents had yet to be produced.

20 MR. DILLICK: So this was a transmittal
21 memo for just -- this advertising material?

22 MR. ROLLER: No, there's more than that,
23 and we will get to -- more into that.

24 MR. DILLICK: It's closing advertising
25 material, and it's whatever the documents are.

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1 printed out --

2 A Correct.

3 Q How did you do that?

4 A I just went to our Website and pulled them
5 off.

6 Q Do you have any reason to believe that what
7 has been marked Exhibit 3 is anything other than what
8 was produced by your -- by Intrax's bankruptcy
9 counsel in the bankruptcy proceeding?

10 MR. DILLICK: If you are asking us if we
11 will accept your representation of this being
12 factual, I will represent that we will accept it
13 subject to someone disproving it to us, but we will
14 believe you that it came from Intrax's bankruptcy
15 lawyer.

16 MR. ROLLER: Great. That's what I'm
17 getting at.

18 MR. DILLICK: Okay.

19 MR. ROLLER: There won't be any need to go
20 over that.

21 MR. DILLICK: I will note that there's 54
22 pages here. My client has not reviewed every single
23 page. If you want us to review every single page and
24 discuss each -- and be that thorough, please tell us
25 and we will have to take a break while we do that.

23 (Pages 86 to 89)

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1 It will take a little bit of time.
2 MR. ROLLER: I don't think we need to do
3 that right now.
4 MR. DILLICK: Okay.
5 BY MR. ROLLER:
6 Q Mr. Mak, when you printed these pages from
7 the Website --
8 (Attorney-client conference.)
9 MR. ROLLER: Please strike my preamble
10 there.
11 Q Are the documents that you printed from the
12 Website and were produced in the bankruptcy
13 proceeding -- do those reflect the Microsoft products
14 that were sold through Intrax's Website?
15 A I would say most of it. We were under a
16 time crunch, and we were not able to produce every
17 single document, but this was probably the vast
18 majority of it.
19 Q So there may be Web pages that through
20 which Microsoft software was offered for sale through
21 the Surplus Computers' Website but that aren't --
22 that were not produced in the bankruptcy proceeding?
23 A Correct. Correct.
24 Q Are the pages that were produced in the
25 bankruptcy proceeding -- do all of those represent

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1 Microsoft products that were at one time sold by the
2 Intrax Group?
3 A Correct.
4 MR. DILLICK: Sold or offered for sale?
5 MR. ROLLER: Well, I asked sold.
6 THE WITNESS: Okay.
7 BY MR. ROLLER:
8 Q Do you have any clarification given your
9 counsel's comment?
10 A No.
11 Q Are all of the products in the printed Web
12 page -- the Web pages that were printed and produced
13 in the bankruptcy proceeding, are all of those
14 products presently offered by Intrax for sale?
15 A No.
16 Q Are any of those products presently offered
17 by Intrax for sale?
18 A No.
19 Q I'd like to direct your attention to --
20 A Well, let me change that. We may have some
21 Microsoft hardware product, mice and keyboards, but
22 that's about it. There's no software offered for
23 sale.
24 Q I understand.
25 A So let me rephrase that because I don't

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1 want there to be documents of the hardware and then
2 you guys pull up on my Website and say, "Hey, look,
3 there's hardware and you said no."
4 Q I understand your answer. Thanks.
5 A Okay.
6 Q I'd like to direct your attention to the
7 document that is marked in the lower right-hand
8 corner that ends in the digits 13.
9 A Okay.
10 Q Can you tell me what this page is offering
11 for sale.
12 A Microsoft Windows XP, Professional x64,
13 Edition NFR.
14 Q What does NFR mean?
15 A Not for resale, so for promotion.
16 Q And can you look under the image of the
17 disk, there's a paragraph that starts: "Please
18 note."
19 Can you read the first sentence of that
20 aloud, please.
21 A "This is a fully functional original
22 Microsoft Student Media CD insulation key code and
23 CD."
24 Would you like me to finish it?
25 Q No, that's fine.

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1 So is this Microsoft Student Media
2 software?
3 A Yes.
4 Q And to the right of the image of the disk,
5 there is a number, \$299.99, that's crossed out, and
6 to the left of that is a number, 27.99 on sale.
7 Do you see that?
8 A Correct.
9 Q Did Intrax sell all of its XP Professional
10 x64 for \$28?
11 A Correct.
12 MR. DILLICK: Wait.
13 THE WITNESS: Well, actually, I don't know.
14 I am not sure.
15 MR. DILLICK: And are you asking him with
16 respect to student version or what?
17 MR. ROLLER: That's a point well taken.
18 Q Student -- Windows XP Professional x64,
19 Edition Student Media, do you know whether Intrax
20 always offered that for 27.99?
21 A Basically, this was the last price that
22 Intrax offered the product at.
23 Q Do you know when it last offered this
24 product?
25 A I don't remember.

24 (Pages 90 to 93)

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1 Q Are there -- do you have any way of
2 determining that?
3 A We can look in the computer system.
4 Q And that would tell you?
5 A Correct.
6 Q Do you know whether it was after Microsoft
7 filed this lawsuit in April of 2007?
8 A I actually do not know. I don't want to
9 guess.
10 Q The next sentence under "Please note"
11 reads -- on the CD, it states: "You must get license
12 to use this CD."
13 Do you see that?
14 A Yes.
15 Q Did Intrax do anything to ensure that its
16 customers who bought these CDs had such a license?
17 A What we did was we made them aware of what
18 they were buying. We never -- we never --
19 MR. DILLICK: Read the question back,
20 please.
21 (Record read by the Reporter as follows:
22 "QUESTION: Did Intrax do anything to
23 ensure that its customers who bought these
24 CDs had such a license?")
25 MR. DILLICK: Okay. Objection. That

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1 assumes a fact that is not in evidence and lacks
2 foundation in that this -- you didn't ask him whether
3 or not the software came with the license or not.
4 BY MR. ROLLER:
5 Q Okay. Answer the question.
6 MR. DILLICK: Are you going to provide a
7 proper foundation for it?
8 Read the question back.
9 (Record read by the Reporter as follows:
10 "QUESTION: Did Intrax do anything to
11 ensure that its customers who bought these
12 CDs had such a license?")
13 MR. DILLICK: Hold on a second.
14 MR. ROLLER: Steve, what did you say?
15 MR. DILLICK: I said, "Hold on a second."
16 That's my objection. It lacks foundation.
17 You have not sought to determine and you haven't
18 represented whether or not there was a license
19 obtained or that came with this disk.
20 MR. ROLLER: I understand your objection.
21 Q Can you answer the question?
22 A Okay. We tried to represent the product as
23 accurately as possible to our customers who are
24 buying it. So if they did have a license that would
25 allow them to purchase this, then they can do so.

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1 Q Did you do -- did Intrax do anything to
2 check whether they had such a license?
3 A In our retail stores, we had signs that had
4 the same disclaimer.
5 MR. DILLICK: Okay. You are done with your
6 answer?
7 THE WITNESS: Yeah. I guess.
8 (Attorney-client conference.)
9 THE WITNESS: Okay.
10 MR. DILLICK: What's your question?
11 BY MR. ROLLER:
12 Q Did you ask the customer for proof that --
13 did Intrax ask the customer for proof that it had a
14 license to use this software?
15 A No.
16 Q Did Intrax sell the customers a license to
17 use this software?
18 A No.
19 MR. DILLICK: Well, wait a second.
20 MR. ROLLER: That's his answer. You
21 can't --
22 MR. DILLICK: Wait a second. Let's wait a
23 second.
24 THE WITNESS: Okay, no. But what's very
25 interesting about this product is when you boot it up

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1 to install, Jeremy, it says, "Do you agree to this
2 license agreement?" and the license agreement comes
3 up. Okay? We don't tell people that that's a
4 license agreement, but when you boot the software up
5 to install and it says, "Do you agree to this license
6 agreement, "Yes" or "No"?" that implies that that
7 thing is a license agreement on the software.
8 MR. DILLICK: So it comes with a licensing
9 agreement.
10 THE WITNESS: And on every disk, there is a
11 EndUser Licensing Agreement in the text format on
12 every single disk, EULA.
13 BY MR. ROLLER:
14 Q Can you take a look at what's been marked
15 as Exhibit 2. I'd like you to look at the language
16 under where it states: "Student Media: All use
17 subject to Volume License Agreement."
18 Did you -- did Intrax provide its customers
19 a copy of that Volume License Agreement?
20 A We never had a Volume License Agreement.
21 Q When the -- is it your understanding that
22 when the software was booted up, as you said, an
23 EndUser License Agreement appeared?
24 A There was EndUser License Agreement that
25 appeared on every single disk that says, "Do you

25 (Pages 94 to 97).

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1 agree to this license agreement?" but we never told
2 our customers.
3 Q Do you believe that the EndUser License
4 Agreement is the same as the Volume License Agreement
5 that's referenced on the disk?
6 A I don't know. I don't know.
7 Q Okay. Looking again at Exhibit 2, and
8 there is the language in smaller print below where it
9 says, "Student Media: All use subject to Volume
10 License Agreement. Do not make illegal copies of
11 this disk. Not for retail or OEM distribution. Not
12 for resale."
13 A Okay.
14 Q Were you aware of that content on the disk
15 when Intrax sold these disks?
16 A Yes, I was, but DSP product has exact same
17 disclaimer on it that says "Not for retail or OEM
18 distribution."
19 Q Does DSP product say, "All use subject to
20 Volume License Agreement"?
21 A I'm not sure.
22 Q And you didn't provide your customers a
23 copy of the Volume License Agreement?
24 A We were never given one when we purchased
25 the product.

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1 Q Did you ever ask your supplier of the
2 products for a copy of Volume License Agreement?
3 A No.
4 Q Why not?
5 A I just never did.
6 Q Even though you saw that "All use subject
7 to Volume License Agreement," you never asked for a
8 copy of that agreement?
9 A Correct.
10 Q And you have never seen a copy of such an
11 agreement?
12 A I've never even seen a Volume License
13 Agreement before. I don't know how they look.
14 Q I'd like you to turn to the page in
15 Exhibit 3 that's marked in the lower right corner
16 "40."
17 Do you see what that is?
18 A Yes.
19 Q What is it?
20 A Microsoft Word 2000.
21 Q And then in parentheses, it says "sleeve."
22 What does that mean?
23 A Sleeve is the type of packaging that it was
24 in.
25 Q Was a copy of the disk included in the

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1 sleeve?
2 A Correct.
3 Q Who acquired Microsoft software for Intrax?
4 A It was either me or Raymond Chau.
5 Q Do you know who acquired it most of the
6 time?
7 A Me.
8 Q Who acquired Microsoft Student Media
9 software?
10 A Me.
11 Q Did Raymond acquire --
12 A No.
13 Q Did Raymond acquire Microsoft Student Media
14 software?
15 A No.
16 Q How did you acquire Microsoft Student Media
17 software for Intrax?
18 A Well, it was first offered to me by various
19 retailers. I never even heard of it before.
20 Q Who offered it to you?
21 A Jim Craighead at Technology Enterprises.
22 Q Anyone else?
23 A And some guy named Tim at Globe 2000, I
24 believe. Globe 2000, I believe, was the name of his
25 company.

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1 Q Do you know Tim's last name?
2 A No, I don't.
3 Q Do you know when Mr. Craighead first
4 offered it to you?
5 A I'm not sure. I'm sure that -- I'm not
6 sure at all.
7 Q Do you know when Globe 2000 first offered
8 it to you?
9 A I'm not sure. We never even sold that
10 product until it was offered to us. Never even heard
11 of it before.
12 Q How was it ordered?
13 A How was it ordered?
14 Q How did you -- I would like you to describe
15 the process for how Intrax would acquire the
16 Microsoft Student Media software.
17 A Well, what would happen is they would call
18 me up and say, "Hi, Mike, I have this for sale," and
19 I would ask, "Well, what is it?" And they would
20 explain it to me or tell me what they thought it was,
21 and then I would make a decision to buy it or not.
22 And then if it starts to sell in our
23 Website and it's a -- and it sells, then I would call
24 them if we run out, and that's basically the ordering
25 process.

26 (Pages 98 to 101)

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1 Q And does Intrax issue a purchase order for
2 this?
3 A Sometimes, but not all the time.
4 Q Some of the conversations -- some of the
5 orders were placed by telephone?
6 A The majority of those telephone.
7 Q The majority was telephone?
8 A Majority was telephone.
9 Q Majority for Student Media was telephone?
10 A I'd probably say 100 percent of it was
11 telephone.
12 Q And were -- did -- when a telephone order
13 was placed, would a purchase order be generated by
14 Intrax?
15 A We would make a purchase order for our own
16 files, but we wouldn't fax it to them. You know,
17 it's sort like a receiving log for us.
18 Q Were purchase orders -- were orders for
19 Student Media ever placed for which a purchase order
20 was not generated?
21 A Yes, many times.
22 Q What percentage of the times would you
23 estimate that that happened?
24 A I have no clue. I have no clue at all.
25 Q More than 10 percent of the time?

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1 A I'm sure it's much more.
2 Q More than 50 percent of the time?
3 A I'm sure -- you know, I really don't know.
4 I mean, it would be a total guess, Jeremy.
5 MR. DILLICK: Don't guess.
6 THE WITNESS: It would be a complete guess.
7 BY MR. ROLLER:
8 Q Did you place orders for Microsoft Student
9 Media by e-mail?
10 A No.
11 Q Did you place orders for Microsoft Student
12 Media by Instant Message?
13 A Probably not.
14 Q Would you place orders by fax?
15 A No.
16 Q Were there times that a purchase order
17 would be generated and it would be sent to the
18 supplier of Student Media?
19 A No.
20 Q They were never sent to the supplier of
21 Student Media?
22 A Not that I remember. I shouldn't say no.
23 Not that I remember, Jeremy.
24 Q Okay. And when you place an order for
25 Student Media from, say, Mr. Craighead, what

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1 information would you give him about the order?
2 A Generally, just ask. "Well, how many do
3 you want, Mike?" I would say, "I'll take 50." "I'll
4 take a hundred," and he would send it to me.
5 Q How did you pay for it?
6 A Generally by check.
7 Q Would he talk about the price on the phone
8 call?
9 A He would just tell me what the price is and
10 so I either would say "Yes," "No," or "Could you go
11 lower?" We would negotiate the price, and once the
12 price is negotiated, he would send the product.
13 Q And would you send the product after you
14 got the product or before?
15 A Always after. I never prepaid for product.
16 Q Same practice with Globe 2000?
17 A Mm-hmm.
18 MR. ROLLER: I think we are on Exhibit 4.
19 (Exhibit No. 4 was marked for
20 identification by the Court Reporter.)
21 BY MR. ROLLER:
22 Q Mr. Mak, you have been handed what's been
23 marked as Exhibit 4, and I'm going to represent to
24 you that these are records that were produced by
25 Intrax as bankruptcy counsel to Microsoft in the

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1 bankruptcy proceeding. I'm also going to represent
2 to you that I had a paralegal in my office
3 Bates-stamp these beginning with MSNTRXBTR 000136 and
4 ending with 000711.
5 Can you just flip through the documents
6 quickly.
7 A All of it?
8 Q Just thumb through it.
9 MR. DILLICK: Is there a point to his
10 thumbing through it?
11 THE WITNESS: Looks like what I supplied
12 you.
13 MR. DILLICK: Hold on.
14 BY MR. ROLLER:
15 Q Do you recognize what it is?
16 A Yes.
17 Q Okay. What do they appear to be?
18 A Invoices from product that we bought.
19 Q Are there purchase orders there as well?
20 A There are some purchase orders.
21 Q Are you aware that your counsel -- Intrax's
22 counsel in the bankruptcy proceeding provided
23 Microsoft Intrax's records of acquisition of
24 Microsoft products from 2004 to the present?
25 A Yes.

27 (Pages 102 to 105)

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1 Q Did you gather those records for production
2 to Microsoft?
3 A Yes. I had assistance with a -- with my
4 bookkeeper.
5 Q How did you -- how did you gather these
6 documents -- the documents that were produced to
7 Microsoft?
8 A I just had her go through all the purchase
9 invoices, you know, all the copies of invoices that
10 we had, and anything that had Microsoft product on
11 it, we copied.
12 Q Who was the bookkeeper who did that?
13 A Ann Wang.
14 Q Ann presently works at Intrax?
15 A Yes.
16 Q How long has she worked there?
17 A Oh, my God, long time. I'm not sure
18 exactly, but a long time.
19 Q What are Ann's duties?
20 A She's the bookkeeper.
21 Q Who is Ann's boss?
22 A Me.
23 Q Are you confident that the documents that
24 were gathered and produced to Microsoft in the
25 bankruptcy proceeding represent all of the documents

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1 in Intrax's possession for its acquisition of
2 Microsoft's products?
3 A To the best of my knowledge. I mean, we
4 tried our best to --
5 Q Do you have any reason to believe that
6 Exhibit 4 is anything other than the documents that
7 were produced by Intrax's bankruptcy counsel to
8 Microsoft?
9 A No. No.
10 Q Where are these -- are these documents --
11 are they photocopies of paper records?
12 A Yes.
13 Q Would there be any electronic records?
14 A Of this?
15 Q Yes.
16 A No.
17 Q So if -- well, let me clarify. Let's turn
18 to the second page, which is marked 137.
19 A Okay.
20 Q And that's -- it says, at the top,
21 "Purchase Order 2549."
22 A Okay.
23 Q Is this a purchase order that Intrax
24 produced?
25 A Yes.

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1 Q And would there be in Intrax's -- does
2 Intrax possess an electronic copy of this purchase
3 order?
4 A Yes.
5 Q Would Intrax possess an electronic copy of
6 an invoice from one of its suppliers of Microsoft
7 products?
8 A No.
9 Q Okay. Talking about the paper invoices and
10 purchase -- and purchase orders, who at Intrax is
11 responsible for maintaining invoices and purchase
12 orders?
13 A Ann.
14 Q And is it fair to say that Ann maintains
15 these records in the ordinary course of Intrax's
16 business?
17 A Mm-hmm.
18 Q Is that "yes"?
19 A Yes.
20 Q Earlier, we talked about James Craighead.
21 Do you know the name of the company
22 Mr. Craighead owns?
23 A Technology Enterprises.
24 Q Okay. And did you buy Microsoft software
25 from Mr. Craighead --

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1 MR. DILLICK: Wait.
2 BY MR. ROLLER:
3 Q -- on Intrax's behalf?
4 A Yes.
5 Q I don't want you to go through -- and we
6 don't have time for you to go through -- all these
7 pages, but based on your present recollection,
8 without looking through these, do you recall what
9 Microsoft products you purchased from Intrax -- from
10 Mr. Craighead or his company on Intrax's behalf?
11 A Various versions of Student Media, OEM
12 product, and DSP product.
13 Q And that's Microsoft software?
14 A Correct.
15 Q Did you buy -- do you recall whether you
16 bought Microsoft Windows XP from Mr. Craighead?
17 A In which form?
18 Q Well, just generally first.
19 A In general, like whether it was --
20 Q It doesn't matter whether OEM, DSP, or
21 whatever.
22 A I'm sure we have.
23 Q What about Windows -- Microsoft Windows XP?
24 A Yes.
25 Q Microsoft Office 2003?

28 (Pages 106 to 109)

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1 A You know, for with the XP Student Media.
2 When you say "XP," are you saying XP Home,
3 XP Pro, or just in general?
4 Q XP generally.
5 A We had Windows XP Student Media from
6 Craighead.
7 Q Did you buy Windows XP Home Student Media
8 from Craighead?
9 A I don't ever remember seeing that.
10 Q Did you buy Windows XP Professional Student
11 Media from Mr. Craighead?
12 A I believe we did.
13 Q Did you buy Windows XP Professional 64 bit
14 from Mr. Craighead?
15 A Yes.
16 Q Did you buy Windows XP Professional
17 Enterprise Edition from Mr. Craighead, Student Media?
18 A You know, I know we bought Windows XP
19 Student Media. I know we bought XP 64. As far as
20 the Pro version goes, I'm not sure they were
21 Enterprise. Not Enterprise, but I do know we bought
22 XP Pro. I bought it for Intrax, not for myself.
23 Q That's fair enough.
24 Do you know whether you bought Microsoft
25 Office 2003 Standard Student Media from

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1 Mr. Craighead?
2 A Yes.
3 Q And did you?
4 A Yes.
5 Q Did you buy Microsoft Office 2003
6 Professional from -- Student Media from
7 Mr. Craighead?
8 A Yeah, we bought a lot of product from
9 Mr. Craighead, so I'm not 100 percent sure exactly.
10 I mean, if I had invoices in front of me, I would
11 know, but I'm not 100 percent sure.
12 Q Sitting here today, aside from the
13 Microsoft Windows XP Student Media and the Microsoft
14 Office 2003 Student Media that you bought from
15 Mr. Craighead, do you recall buying any other
16 Microsoft Student Media from Mr. Craighead?
17 A Yes. We bought various versions of Office
18 Student Media. We bought some Server Student Media,
19 and we bought some Video Student Media, and I believe
20 that was it. But this is just off the top of my
21 head.
22 Q Did you -- did Intrax sell the Server
23 Student Media you bought from Mr. Craighead?
24 A Yes.
25 Q Did Intrax sell the Video Student Media you

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1 bought from Mr. Craighead?
2 A Yes. Some of it we ended up throwing away.
3 Q Do you have an estimate of the number of
4 units of Microsoft Student Media software you bought
5 from Mr. Craighead?
6 A I have no clue whatsoever.
7 Q Do you know where Mr. Craighead -- do you
8 know from where Mr. Craighead acquired the Microsoft
9 Student Media software you bought?
10 A No.
11 Q Do you know where Mr. Craighead acquired
12 the Microsoft software generally that you bought?
13 A Not really. I mean, I don't really
14 remember. I didn't really get into that with him.
15 Q Did you ever ask him where he got his
16 Microsoft Student Media software?
17 A No.
18 Q Why not?
19 A I generally don't ask those questions.
20 Q Why not?
21 MR. DILLICK: That implies that there would
22 necessarily be a reason.
23 THE WITNESS: I mean, I just assumed there
24 was no reason to. I assumed that the product was --
25 I assumed there are no problems with the product.

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1 MR. ROLLER: Steve, I've been letting you
2 get by with speaking objections. That's a speaking
3 objection. It's improper.
4 MR. DILLICK: So? So? What is --
5 MR. ROLLER: It's improper. You are
6 suggesting the answer to --
7 MR. DILLICK: First of all, I don't mean to
8 make any improper objections. I think you
9 mischaracterize them.
10 MR. ROLLER: I'll read the transcript with
11 interest later, but that's not my recollection. I
12 think you know it's improper to suggest the answer to
13 the witness.
14 MR. DILLICK: I'm not suggesting the answer
15 to the witness. What I resent is that you are asking
16 him questions which imply something which is not
17 necessarily the case.
18 MR. ROLLER: Can you -- could you read my
19 last question, please.
20 (Record read by the Reporter as follows:
21 "QUESTION: Did you ever ask him where he
22 got his Microsoft Student Media software?
23 "ANSWER: No.
24 "QUESTION: Why not?
25 "ANSWER: I generally don't ask those

29 (Pages 110 to 113)

<p style="text-align: right;">Page 114</p> <p>1 questions. 2 "QUESTION: Why not?") 3 BY MR. ROLLER: 4 Q Why do you generally not ask your suppliers 5 of Microsoft software where they acquired the 6 software? 7 A I just never really had a reason to. I 8 mean, I trust that the product that they are selling 9 me is not an issue. 10 Q Do you know where Mr. Craighead's supplier 11 of Microsoft Student Media got his software? 12 A Not -- 13 MR. DILLICK: Mr. Craighead's supplier? 14 THE WITNESS: I don't even know who 15 Mr. Craighead's supplier is. 16 MR. DILLICK: Could you just read back the 17 last question, please. 18 (Record read by the Reporter as follows: 19 "QUESTION: Do you know where 20 Mr. Craighead's supplier of Microsoft 21 Student Media got his software?") 22 THE WITNESS: No, because I don't know who 23 his supplier is. 24 BY MR. ROLLER: 25 Q Do you know -- do you know to whom</p>	<p style="text-align: right;">Page 116</p> <p>1 Q Did you ever ask to see that agreement? 2 A No. 3 Q Why not? 4 A Just never did. 5 Q Did he tell you who the Microsoft 6 distributor was? 7 A I believe it was TechData. 8 Q Did you know that in the early part of this 9 decade, Mr. Craighead and his company, NBC 10 Enterprises, was sued by Microsoft? 11 A He did tell me that. 12 Q Did you ever wonder why he would have an 13 agreement with Microsoft or its distributor if he had 14 been sued by Microsoft? 15 A He explained that he was wrongfully 16 prosecuted -- this is what he's telling me, Jeremy, 17 that he was wrongfully prosecuted; that he was 18 wrongful -- his home and business was wrongfully 19 raided, and he ended up winning a lawsuit against 20 Microsoft. 21 Q Did he tell you that he paid Microsoft 22 \$500,000 in that lawsuit? 23 A He never -- no, he never told me that at 24 all, never. He never told me he paid a dime to 25 Microsoft. He said his -- his exact words to me was,</p>
<p style="text-align: right;">Page 115</p> <p>1 Microsoft initially distributed any of the Microsoft 2 Student Media software that you purchased from 3 Mr. Craighead? 4 A I've only heard rumors. 5 Q Do you know where any of the software that 6 you purchased -- any of the Microsoft software that 7 you purchased from Mr. Craighead -- to whom that was 8 originally distributed by Microsoft? 9 A No. 10 Q How did you meet Mr. Craighead? 11 A I actually don't remember. 12 Q Do you know about when you met him? 13 A I -- I would imagine seven to ten years 14 ago. I'm not sure. 15 MR. DILLICK: Hold on a second. 16 (Attorney-client conference.) 17 BY MR. ROLLER: 18 Q Did -- 19 MR. DILLICK: One second. 20 THE WITNESS: You know, one thing that Jim 21 told me was that he had an agreement with Microsoft 22 where he was literally buying product from and 23 getting special pricing from one of their 24 distributors. 25 BY MR. ROLLER:</p>	<p style="text-align: right;">Page 117</p> <p>1 "I won against Microsoft." 2 Q Did you believe him? 3 A I assumed he did because he was selling 4 Microsoft product again. I don't understand why -- I 5 didn't understand why Microsoft would allow him to 6 continue selling product if he had lost a case 7 against Microsoft, and especially if he was -- if he 8 had written a check to Microsoft for \$500,000. I 9 didn't know that, had no clue. He never disclosed 10 that to me. 11 Q Did Mr. Craighead ever say anything about 12 the Microsoft Student Media software? 13 A He told me that he felt that with the 14 disclaimers I was making, you know, it shouldn't be 15 an issue, and he also said that, you know, since he 16 had a -- since he was doing so, business with 17 Microsoft, that probably nothing would ever happen. 18 Q Did he acknowledge that it might be an 19 issue? 20 A No. 21 MR. DILLICK: That what might be an issue? 22 BY MR. ROLLER: 23 Q That distribution of Microsoft Student 24 Media software might be an issue? 25 A No, he never really acknowledged that to</p>

30 (Pages 114 to 117)

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1 me.
2 Q Then why did he say with disclaimers it
3 shouldn't be an issue?
4 A I don't know. I mean, I don't know. I
5 mean, I don't remember all the conversations I've had
6 with him.
7 Q Do you remember anything else that
8 Mr. Craighead said about Microsoft Student Media
9 software?
10 A He said a lot of people were buying it, and
11 he said that people weren't having any issues. He
12 said he was selling a bunch of it and he never had
13 any problems. I mean, we never sold the product
14 until he contacted us.
15 Q Did you purchase Microsoft Student Media
16 software from Globe 2000?
17 A Yes.
18 Q And sitting here, again, without going
19 through those documents in great detail, do you
20 recall what Microsoft Student Media products you
21 bought from Globe 2000?
22 A I believe it was more office products.
23 Q Do you recall whether you bought
24 Windows XP?
25 A I don't recall.

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1 Q Do you recall whether you bought anything
2 aside from Office?
3 A I don't recall. I don't want to give you
4 wrong information.
5 Q Do you know where Globe got the Microsoft
6 Student Media software that you --
7 A No.
8 Q -- purchased from it?
9 A No.
10 Q Do you know who first received the
11 Microsoft Student Media software from Microsoft that
12 you eventually purchased from Globe?
13 A I have no clue.
14 Q Do you know a company called Microplus
15 International Tech?
16 A Yes.
17 Q What Microsoft products did Intrax buy from
18 Microplus?
19 A Microsoft Office, DSP, OEM, XP Pro, XP
20 Home, you know, maybe some copies of Word. I'm not
21 sure.
22 Q Any other Microsoft products that you
23 recall, sitting here right now?
24 A I'm not sure.
25 Q Did you buy Microsoft Student Media

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1 software from Microplus?
2 A That I am not sure.
3 Q Aside from Mr. Craighead and Globe 2000, do
4 you recall any -- do you recall buying Microsoft
5 Student Media software from any other suppliers?
6 A There was one more supplier I bought one
7 small batch from, but I don't remember the name of
8 his company. It was based in the Midwest, and I
9 don't remember his name. I think he was from North
10 Carolina maybe. I don't remember his name.
11 Q Pronet Cyber?
12 A No, I never heard of that company.
13 Q Joseph Teshome?
14 A No, never heard of that company. If you
15 mention it later, I'm sure I'll remember. I just
16 don't know who.
17 Q Do you know a company called Saint
18 Cyberlink International?
19 A Yes.
20 St Cyberlink?
21 Q Yes.
22 A Yes.
23 Q Do you call it St Cyberlink or
24 Saint Cyberlink?
25 A I think it's just S-t.

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1 Q Did you purchase Microsoft products from
2 St Cyberlink on Intrax's behalf?
3 A Yes.
4 Q What Microsoft products?
5 A Mostly OEM and DSP product.
6 (Attorney-client conference.)
7 THE WITNESS: Okay.
8 BY MR. ROLLER:
9 Q You don't recall where -- I'm sorry.
10 Do you recall any other Microsoft products
11 that you bought from St Cyberlink?
12 A Not really. I mean, that this -- I don't
13 think we bought any Student Media from them.
14 Q Would it be fair to characterize
15 Mr. Craighead, Globe 2000, and Microplus and
16 St Cyberlink as Intrax's larger suppliers of
17 Microsoft software?
18 A Them and ASI, which is one of your larger
19 Microsoft distributors, and MOD Labs, which is also
20 one of your distributors.
21 Q And what products did you buy from ASI?
22 A Mostly operating systems.
23 Q And what -- Build, OEM, DSP?
24 A Probably DSP. But, you know, the -- I need
25 to clarify something, though. You know, it's really

31 (Pages 118 to 121)

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1 confusing because, in the past, there was only OEM
2 product. There was no such thing as DSP product.
3 And right now, you have DSP product. Over the last
4 few years, they have OEM and DSP product. But the
5 products are identical. When you look at them, you
6 can't distinguish them. They look exactly the same.
7 The OEM and DSP product looks exactly the same. And,
8 you know, it's -- it's extremely confusing because,
9 at one time, Microsoft even allowed, as part of their
10 licensing agreement, that you could sell the OEM
11 product that you would buy from MOD Labs and ASI
12 without any hardware restrictions. And then they
13 would change it, and then they would say, "Oh, well,
14 you know what? You have to bundle with it something,
15 and you can even bundle it with a floppy disk or
16 something," so --
17 Q Does Microsoft --
18 MR. DILLICK: Hold on. Hold on a second.
19 THE WITNESS: So it's extremely confusing
20 as to, over the years, how they have had OEM and
21 DSP -- actually, over the years, they have only had
22 OEM, and then they switched to having OEM and DSP.
23 But the only difference was where the product was
24 purchased from, but they looked identical. You
25 couldn't distinguish them.

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1 MR. ROLLER: Object as nonresponsive.
2 Q Do you -- does Microsoft DSP CDs look the
3 same as Microsoft Student Media CDs?
4 A They have a hologram. They are similar.
5 Q Are there differences between Microsoft --
6 the way Microsoft DSP software looks and the way
7 Microsoft Student Media software looks?
8 A Yes.
9 Q What are some of the differences?
10 A One thing is they don't say "Student Media"
11 on them. And, you know, unless I have the two CDs
12 next to each other, I couldn't tell you exactly what
13 the --
14 Q Do you recall whether DSP products say "Not
15 for OEM distribution"?
16 A I do believe they do say "Not for retail or
17 OEM distribution."
18 Q Do you recall whether the OEM products say
19 "Not for OEM distribution"?
20 A I think I just answered that.
21 Q I think before we were talking about DSP.
22 Do you recall whether the OEM product said
23 "Not for OEM distribution"?
24 A I'm not -- I'm not sure.
25 Q Okay. Do you recall whether OEM products

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1 say "Use subject to a Volume License Agreement"?
2 A I'm not sure.
3 Q And do you recall whether DSP products say
4 "Use subject to a Volume License Agreement"?
5 A I'm not sure.
6 MR. ROLLER: Okay. Let's go off the record
7 for a second.
8 (Lunch recess taken at 12:01 p.m.)
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1 AFTERNOON SESSION 12:44 P.M.
2
3 BY MR. ROLLER:
4 Q Mr. Mak, I would like you to look at
5 Exhibit 2 one more time, and if you look at the top
6 beneath "Enterprise Edition 2003," in parentheses, it
7 says "Product Key Required."
8 A Yes.
9 Q Can you tell me what a product key is?
10 A It's a key that's given by Microsoft for
11 the products to activate their product.
12 Q And when you say "key" --
13 A It's a key code.
14 Q So it's a series of numbers and letters?
15 A Correct.
16 Q Okay. Were product keys distributed --
17 strike that.
18 When Intrax sold Microsoft -- sold media
19 software, were product keys to activate the software
20 included?
21 A Every product key we ever shipped with the
22 product came with the product when we purchased it,
23 when Intrax purchased it. We never generated our own
24 keys. We never purchased separate keys. All the
25 keys were generally attached on the back of the

32 (Pages 122 to 125)

<p style="text-align: right;">Page 126</p> <p>1 sleeve, so if you -- if you had a package here and 2 you opened it up, it would probably be behind the 3 sleeve, because right here is a cardboard backing. 4 Q I understand. 5 So it would be behind the sleeve but not on 6 what is marked -- the second page of Exhibit 2? 7 A Correct. 8 Q Is that right? 9 A Right. 10 Q Okay. 11 A If it's a 2-CD set, the product key would 12 be on one of the sleeves somewhere. 13 Q Did Intrax sell 2-CD sets? 14 A Well, I mean, like the server product 15 generally had more than one disk. 16 Q Would Microsoft XP software ever come with 17 a Microsoft -- say a Microsoft XP Pro CD and also a 18 Microsoft XP Pro 64-bit CD? 19 A I'm sorry. Could you repeat that question? 20 Q Did you ever see in the same package 21 Microsoft XP Pro software and Microsoft XP Pro 64-bit 22 software? 23 A When we purchased that software, it was 24 always separated. They were in separate packages. 25 Q And would there be a --</p>	<p style="text-align: right;">Page 128</p> <p>1 Q Okay. So if the purchase orders say "NFR," 2 does that mean it's Student Media? 3 A Possibly. Possibly. I don't want to say 4 100 percent yes because I don't know what the other 5 products are. 6 Q Okay. Do you see the number where it says 7 SWW12421? 8 A Yes. 9 Q Do you know what that number refers to? 10 A That's our internal product code. 11 Q Okay. And internal product code for what 12 product? 13 A For a GE wireless optical mouse with 14 Microsoft Office Standard bundle. 15 Q This purchase order is to Technology 16 Enterprises; is that correct? 17 A That's correct. 18 Q Okay. Does the invoice at page 346 19 correspond with this purchase order, 347? 20 A Correct. 21 Q And who is the invoice from? 22 A It's from Technology Enterprises. 23 Q On the invoice at 346, there's a line that 24 says "Quantity 396," and then "Office 2003 Standard 25 Student Media NFR CD Media Sets."</p>
<p style="text-align: right;">Page 127</p> <p>1 A Each product would have its own key code. 2 Q Okay. 3 A So if you are asking -- 4 MR. DILLICK: Hold on. 5 BY MR. ROLLER: 6 Q Okay. I would like to ask some questions 7 about these documents that have been marked 8 Exhibit 4. There are 600 -- 500-something pages. 9 I'm obviously not going to ask about all of them, but 10 if we can move through what I do want to ask about 11 fairly quickly. 12 Mr. Mak, I would like you to turn to page 13 346 and 347, if you would please take a look at both 14 of those. 15 What is page 347? 16 A 347 is a purchase order. 17 Q And can you tell what products the purchase 18 order is for? 19 A Office Standard. 20 Q Okay. Do you know, from looking at 346 and 21 347, whether the Microsoft Office Standard is Student 22 Media software? 23 A It is Student Media. 24 Q And how do you know that? 25 A Because of the NFR designation.</p>	<p style="text-align: right;">Page 129</p> <p>1 Do you see that? 2 A Yes. 3 Q Does that mean that Technology Enterprises 4 sold Intrax 396 units of Office 2003 Standard media? 5 A Yes. 6 Q Why does the invoice not refer to the GE 7 optical mouse? 8 A Because we bundle the mouse ourselves, so, 9 basically, this is how we sold it. So instead of 10 making -- instead of receiving it in as Microsoft 11 Office Standard Student Media NFR Edition, we receive 12 it into the product code that we would eventually 13 sell it as. 14 Do you understand? 15 Q I do. 16 Why did you sell it with an optical mouse? 17 A We just thought it would add value. 18 Q Did you sell -- was all of the Student 19 Media software that Intrax sold distributed with a 20 piece of hardware? 21 A No. 22 Q How about the second line of the purchase 23 order, "Generic PS/2 Mouse with MS Office XP Standard 24 NFR"; do you see that? 25 A Yes.</p>

33 (Pages 126 to 129)

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1 Q The Xp Office Standard NFR, is that
2 Microsoft Student Media software?
3 A Yes.
4 Q And 346 indicates that Technology
5 Enterprises shipped 30 units of XP Standard NFR
6 software to Intrax; correct?
7 A Yes.
8 Q And that was the Student Media software?
9 A I believe it was. I mean, I don't know
10 100 percent because this was, what, three years ago,
11 two and a half years ago? So without actually seeing
12 the product, I don't know 100 percent that it's
13 Student Media.
14 Q What else could it be?
15 A NFR products.
16 Q And what other kinds of NFR product is
17 there?
18 A There's promotional product that Microsoft
19 gives away that says "Not For Resale" on it.
20 Q Any other NFR product that would be marked
21 in Intrax's records as NFR aside from a promotion
22 product and Student Media?
23 A Not that I can recall right now.
24 (Attorney-client conference.)
25 THE WITNESS: Yes. You know, the one thing

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1 also is NFR product is actually purchasable through a
2 lot of your own distributors, like Ingram Micro.
3 They sell NFR product.
4 BY MR. ROLLER:
5 Q What kind of NFR product?
6 A You know, I've never bought it from them
7 before. If you look in their catalog, it lists
8 Microsoft not-for-resale product.
9 Q Is that Student Media software?
10 A It may or may not be; I'm not sure.
11 Q Why haven't you bought from them?
12 A We don't have an account with Ingram Micro.
13 Q Of the NFR Microsoft software that Intrax
14 sold, do you know about how much was Microsoft
15 Student Media software?
16 A I'm not exactly sure. I would say the
17 majority was probably Student Media.
18 Q Was it more than 50 percent?
19 A I'm not sure. I'm not sure.
20 Q But you think it was the majority, Student
21 Media?
22 A I can probably confidently say it was.
23 Q Looking at 347, the purchase order, there
24 is a -- on the second line of kind of the order form,
25 there's a box that says "Buyer" and "MM."

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1 A That's me.
2 Q Those are just your initials?
3 A Mm-hmm.
4 Q So that means you bought the software on
5 Intrax's behalf from Technology Enterprises?
6 A Correct.
7 Q I would like to you turn to page 344 and
8 345.
9 What is page 344?
10 A It says, "Office XP Standard CV in sleeve
11 of key, all original."
12 Q Do you know whether this was Student Media
13 software or something else?
14 A It probably was not Student Media.
15 Q Why do you say that?
16 A Because Jim at NBC, if it was Student
17 Media, he would generally put "Student Media."
18 Q Do you know why there is no purchase order
19 number on 344?
20 A We all -- I mean, we were so busy all the
21 time, you know, sometimes we didn't generate purchase
22 orders.
23 Q So --
24 A And when we placed orders with Jim, we
25 didn't give him a purchase order number.

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1 Q So this order was probably placed by phone?
2 A By phone. Well, all the orders, Jeremy,
3 were placed by phone. None of it was ever faxed to
4 him.
5 Q Okay. So the only --
6 A When you see purchase orders here, it's
7 basically for our own internal record-keeping.
8 Q But is it accurate to say that sometimes
9 purchase orders were not created for orders that were
10 placed?
11 A Correct. What's accurate is all the
12 invoices that we have.
13 Q Okay.
14 A Because my bookkeeper, Ann, was very -- she
15 was religious in making sure every invoice for every
16 transaction we ever had we would have a copy of.
17 Q Whose signature is on page 344?
18 A I do not know.
19 Q Okay. Let's turn to page 345.
20 Can you tell me what this is?
21 A Looks like an invoice for Office 2003
22 Standard Media NFR.
23 Q Is that Standard Student Media?
24 A That's what it appears to be.
25 Q For this software, say for the invoices

34 (Pages 130 to 133)